

An exploratory study into the challenges of Tenure Reform in the area of Sweetwater
(Pietermaritzburg): Implications for Policy and Practice.

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Submitted in partial fulfilment of the requirements of the

Master's Degree

In the

School of Political Science

FACULTY OF HUMANITIES

UNIVERSITY OF KWAZULU-NATAL

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Acknowledgements

I wish to thank all those who helped in making this research project success. A special word of thanks firstly to my family and my friend Shakira Qwabe for providing me with support and for being my research assistant at no cost. I would like to thank Mr. M.A. Okbandrias for the great supervision. I also thank the traditional council, Deputy Chairperson of the traditional council, Local district councillors and the representative from the Association for Rural Advancement for providing me with the necessary information and guidelines to collect data for this study.

M.B. Dlamini

June 2014

Abstract

This study aims to explore and identify challenges currently affecting the community of Sweetwater in the area of kwaNxamalala and kwaMpande with regards to land tenure security. The study seeks to highlight whether South Africa's tenure reform policies in communal areas are in accordance with the realities at ground level.

A combination of theories have been used to highlight South Africa's challenge in creating a land administration system with democratic character to ensure effective tenure security for citizens residing in communal areas under the jurisdiction of traditional authorities. The data from the two communities was collected by means of a series of interviews and a focus group discussion with the tribal committee of Sweetwater. The results and findings of the challenges are presented in the study. The main conclusion of the study relates to whether South Africa has been able to provide tenure security to communities residing under the jurisdiction of traditional authorities.

Abbreviations

ANC-African National Congress

CLRA -Communal Land Rights Act

DLA-Department of Land Affairs

DRDLR -Department of Rural Development and Land Reform

ESTA-Extension of Security of Tenure Act

ICRW-International Centre for Research on Women

LRB-Land Rights Bill

LARP -Land and Agrarian Reform Projects

LRAD- Land and Redistribution for Agricultural Development

LAMOSASA-Land Access Movement of South Africa

PWAL-Promoting Women's Access to Land

TLGFA- Traditional Leadership and Governance Framework Act of 2003

Preface

This study represents original work by the author and has not otherwise been submitted in any form for any degree or diploma to any University. Where use has been made of the work of others it is duly acknowledged in the text.

Signed: M.B Dlamini
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Definitions

Inkosi- King

Induna-Chief

Umhlaba-Land

Khonza Fee- an amount paid to the chiefs by those wishing to secure tenure.

Ikhansela- Councillor

Umkhandlu- Traditional Council

Intuthuko- Development

UMasipala- Municipality

Umphakathi-Community

Umkhandlu- traditional council

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CHAPTER ONE

1.1. Introduction

Reform of the highly unequal racial division of landholding inherited from colonialism and apartheid was one of the greatest challenges facing South Africa in the transition to democracy in 1994. Popular expectations were that the new democratic regime would give fundamental effect in the change of property rights to address the history of dispossession and lay the foundations for the social and economic advancement of the rural and urban poor. However, land reform policy, and land reform projects and processes pursued by the government's land reform framework, have mostly been unsuccessful in identifying and attending to different experiences, needs and interests of communities. Customary land tenure and traditional management and allocation of land are still widespread in the province of Kwazulu Natal. Such institutions maintain their traditional power and social responsibility to allocate the rights to use land, resolve conflicts, and carry out overall management of customary land.

1.2. Statement of the problem

Land is one of the most fundamental resources to many individuals. It is a source of economic empowerment and represents a key factor in the struggle for equity and equality. For most individuals, access to land and land ownership translates to a secure place to live and means to earn a livelihood. Therefore rights to use and control of land are therefore central to communities residing in rural areas. The area of Sweetwater is predominantly rural and is held under tribal authority, residential land use is utilized in a rural pattern of scattered settlements based on traditional and communal land tenure and administration. In such rural areas community members require an effective and efficient land administration system to allocate land and provide secure tenure to all residents.

1.3. Objectives of the study

The above scenario called for a study to explore and identify challenges currently affecting the community in the area of Sweetwater with regards to securing their land. The study will also look at the relationship between traditional authorities and the local Vulindlela Municipality in terms of land tenure reform and how the implementation of the program is positively used to empower the community of Sweetwater. This research study will not only contribute to existing knowledge but it also aims at making contributions to broader social issues currently facing South Africa by providing insight to challenges pertaining to land tenure security in the area of Sweetwater.

The objectives of this study are therefore:

- i) To examine the challenges of land tenure reform in South Africa.
- ii) To explore the challenges in the land tenure reform program in Sweetwater.
- iii) To draw out lessons for policy and practice in South Africa.
- iv) To contribute to the existing body of knowledge on Land Tenure.
- v) To understand the role of stakeholders in the tenure reform.

1.4. Research questions

An effective judicial and ‘governance’ system, which ensures that all citizens have access to a fair, equitable and accountable land administration system and it, promotes rural development. This is the intention of the current policy. This all sounds fairly great in theory. However, it is crucial to explore the different challenges at grass root level which are currently facing communities residing in rural areas pertaining to tenure security. It is in that light the study looks at what are the challenges of tenure reform in Sweetwater.

Key research question: What are the challenges of land tenure in the area of Sweetwater?

In order to assist with examining the primary research question, the study was designed to explore the following sub- questions:

- i) How has Land Tenure Reform been implemented in Sweetwater?

- ii) What are the key challenges in the Tenure Reform process?
- iii) What are the weaknesses of land tenure reform?
- iv) What is the role and effectiveness of stakeholders involved in the tenure reform process?
- v) How is the community of Sweetwater dealing with the challenges to tenure Reform implementation?
- vi) What lessons can be learned about tenure reform from the experience of Sweetwater?

1.5. Research methodology

This is a qualitative research study which used primary and secondary data. Primary data in this research study will consist of data in a form of semi structured interviews for key informants and focus group discussions on land reform beneficiaries. Secondary in this study was collected through the identification existing data such as that of books, scholarly journal articles, newspapers and electronic sources collected from relevant previous studies.

1.6. Chapter layout

Chapter 1 - Introduction and Background

This chapter gives a brief outline of the problem statement, Research objectives and methods of investigation.

Chapter 2 - Literature and documentation

This chapter provides a brief overview of the South African context of land reform by looking at the three pillars of the program.

Chapter 3 – Theoretical Framework.

This chapter discusses theories relevant to the study, namely the theory of Democratic decentralization and Social Capital Theory.

Chapter 4- Research Design and Methodology.

In this chapter, an explanation relating to data collecting instruments and data collection procedure is given. This section gives a brief discussion on the limitations pertaining to the research study and also highlights challenges that the researcher encountered during the course of the research study.

Chapter 5 –Data Analysis

This chapter deals with presenting the findings from the different data sets provided by the study. The chapter presents empirical findings based on interviews administered with the Local district councillor, Deputy Chairperson of the Tribal Council, a representative from the Association for Rural Advancement (AFRA), a focus group discussion with the Tribal Committee from kwaMpande and Nxamala. An analysis of data provided by a number of twenty community members that participated in the research study is discussed in detail.

Chapter 6-Discussion of findings

The analysis reflects on the factors or problems currently affecting the community of Sweetwater with specific regards to the implementation of the land reform program. The chapter starts by reviewing two policies namely the Communal Land Rights Act of 2004 and the Traditional Leadership and Governance Framework Act of 2003 and provides an analysis of the policies in alignment with data collected from the study. This is done with a series of themes to guide the discussion.

Chapter 7- Conclusion and Recommendations

This chapter concludes by providing a summary of the study as well as the findings and recommendations.

CHAPTER TWO: LITERATURE REVIEW

2.1. Introduction

A question pertaining to what is land reform for, who should benefit and maybe how it should be pursued ought to be treated as a very important question (Hall & Ntsebenza, 2007:64). The land policy of South Africa is an intensively planned government intervention. This is supported by vast amount of policy documentation and different strategies that have been developed with the aim of enhancing effective implementation of the policy which operates with the objective of achieving namely efficiency and equity. The former urges speed in settling as many land claims and redistributing as many hectares of land in a short period of time. While the latter demands time for proper beneficiary identification, participation and institutional development; giving specific attention to implementation outcomes once land has been transferred (Hall, 2004:175).

The South Africa land reform program comprises of three components namely: restitution which deals with land dispossession after the era of 1913; land redistribution aimed at addressing unequal land ownership among South Africans; and lastly the tenure reform program aimed at securing the land rights of those whose tenure is insecure due to past biased laws and practices. Tenure insecurity is a major problem for three groups namely: residents occupying privately owned land, residents living in rural areas under tribal authorities and the last group are that of farm workers. Distinctive policies and laws apply to each of these three groups (Cousins, 2012:8). Based on existing publications this chapter explores the context of land reform in South Africa. It reviews the history and context of tenure reform in S.A by critically analysing the different policies that have been implemented with the aim of improving tenure security for people residing in rural areas. It also discusses limitations found within The Communal Land Rights Act of 2004 and the Traditional Leadership and Governance Framework. Lastly it will explore land tenure challenges in the province of Kwazulu Natal.

2.2. The Context of Land Reform in South Africa.

The Land Reform Policy Discussion Document for the year 2012 is informed by a new trajectory which seeks to provide a new approach to the South African land reform program. The new approach to Land Reform is now integrated within the Comprehensive Rural Development Programme (CRDP) under a three-pronged strategy. The new strategy is founded on an integrated and coordinated with a broad-based agrarian transformation. This new improved land reform programme is aimed at benefiting rural communities (Land Reform Policy Discussion Document, 2012: 3).

2.2.1. The three pillars of South Africa's Land reform program

The objectives and scope of post-apartheid land reform are set out clearly in the 1997 White Paper on South African Land Policy, summarizing the goals of land reform as: 'to redress the injustices of apartheid; to foster national reconciliation and stability; to underpin economic growth; and to improve household welfare and alleviate poverty (Department of Land Affairs, 1997:6). South Africa's market-driven land reform rests on three pillars, namely, land redistribution, tenure reform and restitution.

2.2.2. Land redistribution program

Land redistribution aims to open up productive land for residential and farming purposes. According to the State Land Summit report (2010) South Africa has managed to redistribute 7% of land against the set target of achieving 30% of redistributed land by 2014. The newly created Department of Rural Development and Land Reform has changed the set target to 2025. The target for land reform, proposed by World Bank and adopted in the Reconstruction and Development Program (RDP) in 1994, was to redistribute 30 percent of agricultural land within the first five years. By 1999, however, less than one per cent of agricultural land had been transferred through all aspects of land reform which are namely land redistribution, restitution and tenure. Redistributing 30% of land by the year 2014 is equivalent to about 24.6 million hectares (Land Access Movement of South Africa, 2010:10). In the year 2011 a total of 3 447

228ha has been transferred to beneficiaries through the redistribution program since the start of land reform in South Africa (Umhlaba Wethu, 2011:1).

A review of the department of land affairs and rural development annual reports (2006/7, 2007/8 and 2008/9) give reflections on the progress of the first pillar of south Africa's land reform program, namely the land redistribution program. For instance, during the period 2006/07, the department of land affairs is reported to have distributed 4.3% of the redistribution target of 30%. Between 2006/07, the redistribution program delivered 258,890 hectares of land to 9 405 beneficiaries during the year under review. This means that the redistribution sub program together with the commission has redistributed 4 211 140 hectares since 1994. During the 2007/08 reporting year, the land redistribution program delivered 347, 011.4967 ha of white-owned commercial agricultural land benefiting 8574 beneficiaries in dire need for land. For the period 2008/09, the land redistribution program delivered 443,601 hectares of white-owned commercial agricultural land as part of its contribution to the broader departmental core objective of redistributing 30% of commercial agricultural land by 2014 (Land Access Movement of South Africa ,2011:12). According to Umhlaba Wethu journal report (2011:3) in the year 2011 a total of 3 447 228ha has been transferred to beneficiaries through the redistribution program since the start of land reform in South Africa, reaching 7.2 percent.

2.2.3. Land Restitution program

Land restitution, aims at restoring land to those who were forcefully removed from it, provided that each land claimant is able to prove that the dispossession occurred no earlier than 19 June 1913. Restitution forms the fundamental part of the land reform program and is closely linked to the need for the redistribution of land and tenure reform (Tenure Act, 1997:6). Restitution program serves a very specific purpose, namely, redress of land rights to claimant communities. A total of 79,000 claims were lodged with the commission on restitution of land rights before the 1998 cut-off date. The year 2007 marked the settlement of virtually all outstanding urban claims, and continued the recent trend of settling large community claims with the restoration of sizable areas of rural land. To date (2010), 96% of the 79 696 lodged land claims have been settled. R275 million the budget was allocated as part of the recapitalization and development of the

farms restored under restitution (Land Access Movement of South Africa, 2011:10). In the year 2011 the restitution program has restored 2 760 527 ha of land to the previously dispossessed (Umhlaba Wethu, 2011:1).

2.2.4. Tenure Program

Tenure reform on the other hand is aimed at improving the security of tenure for all South Africans and to change the race-based dual land tenure that evolved under colonialism and apartheid. It is addressed in a revision of land policy, the administration of land and legislation regarding private property, communal ownership and the rights of those who rent their land or homes. There has been a significant amount of legislation that has been used to improve tenure security such as Labour Tenants Act, the Extension of Security of Tenure Act, prevention of Illegal Eviction from and Unlawful Occupation of Land Act and the Communal land rights Act. In the year 2011, estimated amount of 4% of land was transferred through the tenure reform program (Umhlaba Wethu, 2011:3). In communal land tenure systems, women generally access land through their relationships with male relatives. Women's lack of authority in society also limits their control over the land resources that they are able to access. Communal tenure systems, for example, generally discourage or prohibit land sales and therefore land transactions take place privately. In cases where disputes arise, they cannot be addressed in a public forum (Umhlaba Wethu, 2011:3).

South African tenure reform policy, particularly with regard to communal areas has done very little to attend the needs of the majority of poor, black, women in South Africa's rural areas. The Draft land Rights Bill of 1999, for example, provided that where protected tenure rights are shared by family members, the rights must be registered jointly, by two adult members, and where practical, one of these adults must be a woman. One of the major criticisms about the Bill was that it failed to define or even attempt to define what was meant by "where practical". Moreover, the draft on tenure reform bears negative implications for gender equitable tenure systems. The proposed communal land rights/draft tenure bill, released in late November 2001, also appeared to give traditional authorities more power with regard to land allocation and, introduced contentious concepts such as tribal land ownership (Republic of South Africa Draft

Land Tenure Bill, 2001:27). With the case of South Africa the proposed Bill to some extent undermines land rights of vulnerable groups, especially women. The point is that although women are particularly vulnerable under traditional and communal land tenure systems, they are also not guaranteed land rights under any system of tenure while societal values remain fundamentally patriarchal (Walker, 2005:79). As such, this means that a tenure system is determined by the values of a community, the power relations in a community and the unspoken assumptions that operate in a community, rather than by a set of official rules or legislation enacted. By implication, it is very difficult for any government to change tenure systems and women's positions by means of formal legislation. This does not mean that the government should refrain from taking positive legislative and policy steps in an attempt to ensure gender. In the year 2010, the department of rural development and land affairs indicated that the number of women that benefitted from the tenure program were 18 284 (Department of Rural Development and Land Affairs, 2010:21).

2.2.5. Gender issues

It is critical to ask the question as to whether the land reform program in South Africa has or has not benefited women in South Africa. The concept of gender in South Africa should be considered as one that relates to power relations in rural societies and such socio-economic realities demonstrates the importance of taking socio-economic differences into account, when policies are developed and implemented, to contribute to successful land reform. In terms of policy and legislation, there is no doubt that the ANC-led government is committed to gender equity. The ANC's 1992 Land Policy document called for special procedures to ensure that women gain equal access to land and participate effectively in policy formulation and decision making (Land Reform Policy Discussion Document, 1992). The Reconstruction and Development Program (RDP) recognized women needed to gain more access to land and therefore policies in line with the national policy were developed. For example tenure laws and matrimonial laws were revisited (RDP, 1994, section 2.4:11). The Reconstruction and Development Program (RDP) also stated that the national land reform program should address gender inequities (The Reconstruction and Development Program, 1994: section 2.4:2) and that support services and government assistance for agricultural production should especially benefit

women (The Reconstruction and Development Program, 1994: section 4.5:4). This all sounds good in paper, however it is difficult to have things done practically due to the way socio-economic factors can shape policy implementation at grass root level.

It should be noted that policies and legislation alone, are not enough to ensure gender equity in land access and ownership. The 1997 White Paper, for example, makes reference of a few ideas on how to achieve of gender equity. According to Ruth Hall (1998:41) in her analysis of the 1997 White Paper on South African Land Policy, gender issues are largely included in statements about the vision and objectives of land reform policy, while the term gender is merely dealt with, in the sections of the policy that deal with strategies, policy instruments and institutions (Department of Land Affairs, 1997: 6). It is therefore important to explore the differences between rights and custom and how such concepts have the ability to shape the implementation of policies at ground level. The South African Constitution recognizes and protects both customary law and the Bill of Rights. Customary law is recognized as a fully established system of law in its own right, not simply as a set of traditional or long standing practices (Communal Land Rights Act, 2004: 204). Customary law is one of the long standing practices that have inhibited women from gaining access to land in South Africa. In most patriarchal societies that practice customary law, women have limited rights when it comes to property ownership. The provision on the Communal Land Rights Act of 2004 maintains that men and women have equal legally secure tenure rights and prohibits gender discrimination (Communal Land Rights Act, 2004: 204).

The South African government more importantly has committed itself to developing policies such as , the Land and Agrarian Reform Projects (LARP), Promoting Women's Access to Land (PWAL) and the Land and Redistribution for Agricultural Development sub-program (LRAD) to name a few, as part of their objective towards the promotion of gender equality (Land Reform Policy Discussion Document, 2012:6). Classens (2004) argues that there seems to be a contradiction with regards to section 4 (3) of the Communal Land Rights Act because the Act gives powers to the tribal authorities, where women have little say on the operation of traditional practices. Customary law unfairly discriminates against women with specific regards to the allocation of land and tenure of security. Women are vulnerable to such practices. In African

customs, several literatures reveal that generally women alone cannot acquire land: a man must somehow be in charge. The eldest son in most cases is the one who has access to land and there are hierarchical stages that cannot be skipped in customary law (Budlender, et.al 2011:16). A typical example would be that of a study that was conducted in Kwazulu Natal by the Community of Agency for Social Enquiry. This study aimed at to explore how women's access to land (including different types of land such as residential and fields), their actual use of the different types of land, their decision making capacity in relation to the different categories of land, and the extent of their security or vulnerability to eviction (Budlender, et.al 2011:16). In the study it was found that women had very limited access to land because the Chiefs (Izinduna) in the area did not discuss matters of land with women, since they held the view that such matters could only be handled by man (Budlender, et.al 2011:16).

2.3. A focus on the history and context of land tenure in South Africa

The third leg of South Africa's land policy is tenure reform, which aims to secure the land rights of farm workers and labour tenants living on privately-owned large-scale commercial farms and of residents in the communal areas, or former reserves. For purposes of this discussion it is crucial to define the following key words: land tenure, land tenure security, access to land, land rights, communal and customary because these terms will be used throughout this part of the section interchangeably.

2.3.1. Land tenure

Land tenure refers to the a set of specific guidelines, rules ,authorities, institutions, rights and norms that govern access to and control over land and related resources. It sets out rules and regulations to administer the process of appropriation, cultivation and the utilization of natural resources on a given space or piece of land. It administers how resources can be used and by whom, and for how long and under what circumstances. To be more clear and precise, it is not land itself that is owned, but rights and duties over the given piece of land (International Fund for Agricultural Development, 2008:27

2.3.2. Land tenure security

Land tenure security is concerned with the people's ability to control, utilize and manage a piece of land, and engage in transactions, including transfers. Ideally there are three characteristics that land tenure security must possess, namely:

- Duration – what is the duration of the land rights? (International Fund for Agricultural Development, 2008:27).
- Protection – Is there guaranteed protection if the land rights are to be challenged or threatened? (International Fund for Agricultural Development, 2008:27).
- Robustness – are the holders of land rights free to use and dispose of these rights without interference from others? (International Fund for Agricultural Development, 2008:27).

2.3.3. Access to land

Access to land can be defined as one's ability to utilize, control and transfer the rights to the land with the aim of taking advantage of other opportunities that may be available to him/her (International Fund for Agricultural Development, 2008:28).

2.3.4. Land rights

It should be noted that there are three main rights interrelated to the spatial dimension of land: use rights; control rights; and transfer rights. Use rights refer to the right to use land for residential use, growing crops, passage, grazing animals etc. The term control of rights is concerned with decision making pertaining to land usage. Lastly transfer of rights can be defined as the right to sell or mortgage land, transfer land to others, transfer the land through inheritance and to modify the use and control of rights (International Fund for Agricultural Development, 2008:29).

2.3.5. Communal Land Tenure

The term Communal is used to reflect the manner in which land is allocated and administered in areas under the jurisdiction of traditional authorities, Communal Property Associations and Land Reform Trusts. The term is also used to depict other hybrid systems of community tenure where land access and allocation is based on membership of a particular group or community as opposed to market-based private land transactions. The communal system involves different levels of community decision making pertaining to issues like land rights, land access, land utilization and governmental practices. Communal systems differ from place to place, context to context (LEAP, 2005:15).

2.3.6. Customary Land Tenure

The term customary is used to reflect communal land tenure systems governed under customary principles and values. These include of the manner in which land use, control and management is founded on the community's traditions and normative values that inform the basis of land entitlement in that particular community. The principles governing land access, rights and use are well understood by a local community and may also not adapt to the country's legal procedures (LEAP, 2005:15).

2.3.7. Need for Tenure Reform

Tenure reform in communal areas relates not only to social and economic development, but also to the eradication of poverty in these areas. The submission in respect of the draft Communal Land Rights Bill of 2002 shows that focus must be driven towards the enhancement of South Africa's land tenure system. Therefore representatives from over 70 rural communities, rural NGO's, the South African Human Rights Commission, the Commission on gender equality, the Congress of South African Trade Unions, the National Union of Mineworkers, the Legal Resources Centre, the South African Council of Churches, the Women's Legal Centre, the Program for Land and Agrarian Studies and the National Land Committee all made submissions

on the 2003 Communal Land Rights Bill. A second reason as to why tenure reform was required was due to the lack of clarity pertaining to roles of traditional authorities and local government bodies. This was done with the aim of eliminating political strife over the parties. For instance community leaders perceived communal land as land in which they held authority and jurisdiction over. While on the other hand community members held the view that they were the original owners of the land and wanted to be included in the process of decision making because communities were the beneficial occupiers and users of the land; it was thus only fair and just that land be developed in their best interest (Johnson, 2009:23).

2.3.8. Criteria for tenure reform

In order for tenure legislation to be successful, it must draw focus on issues pertaining to communal land tenure and land rights (Van der Walt, 1990 in Johnson 2009:25). Its contents also have to be appropriate and its implementation effective. The Bill of Rights also cautions that tenure reform legislation must develop strategies to eliminate gender inequality in relation to access to communal land in rural areas (Van der Walt, 1990 in Johnson 2009:26). Policies that have been implemented in the past have had negative impact on women's land rights (Johnson, 2009: 26). Communal land rights and land administration systems comply with the Bill of Rights. This implies that legislation must promote gender equality, eradicate discrimination and advocate for transparency and accountability (Classens et al, 2000 in Johnson, 2009:27).

Tenure reform policies must generate effective and efficient land administration systems that give support to individuals in the process of claiming and protecting their land rights. The whole process of tenure security must be administered in a transparent manner in relation to development, planning and infrastructural development. The above requirements are prerequisites of an effective tenure reform system; however the extent to which these requirements are practiced at grass root level is very questionable (Johnson, 2009:23).

2.3.9. The Land Rights Bill of 1999

The South African Government's initial approach to tackling tenure insecurity for people residing in rural areas was based on the creation of a policy that would transfer ownership from the state to groups or individuals (Cousins,2012: 6). This somehow proved to be a challenge. A problem that was encountered during the implementation of such a policy was in relation to the definition of unit rights of ownership. Another arising issue was whether to give the land to tribes which had a large number of people or to give land to community members held under tribal authorities. Such issues served as a big dilemma for the state. For instance transferring land ownership to a large group could serve as a disadvantage to smaller groups in a sense that it would exclude them from the decision process and vice versa (Cousins,2012: 6). Another major barrier with regards to the implementation of this policy at grass root level was that the investigation and consultation with prospective rights holders was resource-intensive and time-consuming. Test cases also demonstrated that transfer of private ownership caused major tenure disputes and conflict among parties. As a result of these difficulties, policy thinking moved towards the creation of statutory rights which would be secure in law but would not entail the transfer of title. A Land Rights Bill (LRB) was drafted in the year 1998/99 and it created a category of protected rights for which the majority of those occupying land in the former homelands would qualify (Cousins, 2012:7).

The LRB stated clear statutory limitations on the state's rights in respect of this land. The policy proposed that rights such as that of occupation, use, benefit and decision-making to the appropriate right holders of the land. The Bill maintained that the owners of the land could not lose their land, except by the process of appropriation LRB. The policy further stated that the minister would still be the nominal owner of the land but would act with limited power. Protected rights would be conferred upon individuals live on the land and in group systems the protected rights would be shared by the particular group living on the land. A concern was raised concerning the definition of the boundaries of the term group. The LRB solved this difficulty by stating that boundaries must be flexible. For example in cases whereby a boundary of a certain group affects another group, a decision would have to be made and the affected parties must be consulted (Land Right Bill, 1999:4).

The provision of statutory protected rights enabled individuals to use and occupy land without to sort out disputes over the nature and extent of such rights. The content of protected rights is set out as follows in the LRB: it consisted of things like access, occupation, use and benefit. Such rights could be bestowed, transacted or mortgaged. This policy also permitted the process of group decision making and allowed groups to change the content of right in a manner which gave groups the ability to sell or develop the land. This flexibility enabled internal sales of the right things like homestead plots to community members (Land Right Bill, 1999:4).

The LRB maintained that people had the right to choose an institution that would be responsible for the administration of land. During this process a set of agreed upon rules would serve as a bottom line protection for members in accordance with constitutional principles of democracy, equality and due process. The local institution and right holders would also be supported by a Land Rights Officer based in each district (Land Right Bill, 1999:4).

The LRB draft was never implemented as it was set aside when a new minister of agriculture and land affairs was appointed. The minister perceived the Bill as being too complex and expensive to implement. The new Minister was in favour of a policy that would transfer title of state land to tribes or traditional communities. Such a policy would allow traditional leaders to administer land (Land Right Bill, 1999:4).

2.4. The establishment of the Community Land Rights Act

The Communal Land Rights Act was drafted with the security of tenure in mind. The policy has also been characterized as having an element of distribution. The concept of the Communal Land Rights Act was first introduced in 1995/1996, when the Department of Land Affairs was still under Minister Derek Hanekom. The initial goal was to transfer state-owned land to the communities and individuals who were residing on it, but did not have secure title. The bills that were drafted during this time were highly contested, namely the Land Right Bill (Cousins & Classens, 2006: 8).

2.4.1. The Communal Land Rights Act of 2004

The Communal Land Rights Act extends private ownership of land to rural communities. Within areas of communally owned land, it establishes a register of ‘new order rights’ vested in individuals. It also provides for a land administration committee to exert ownership powers on behalf of the community it represents, and allows tribal councils to act as such committees (Republic of South Africa, 2004).

2.4.2. The objectives of the Community Land Rights Act 2004

The aim of the Community Land Rights Act is to provide security of tenure by transferring communal land, including KwaZulu-Natal Ingonyama land, to communities, or by awarding comparable redress; to provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights; to provide for the democratic administration of communal land by communities; to provide for Land Rights Boards; to provide for the co-operative performance of municipal functions on communal land; to amend or repeal certain laws; and to provide for matters incidental (Communal Land Rights Act,2004:1).

2.4.3. Transfer of Ownership

This policy transfers title of communal land from the state to a community. The community must be registered and acknowledged as a juristic personality legally capable of owning land. Members of the community are given a Deed of Communal Land Right document, which can be upgraded to a freehold title if the community agrees. During such a process the minister determines whether or not old order rights should be confirmed and converted into new order rights, and must determine the nature and extent of such rights (Communal Land Rights Act, 2004:2).

The Act makes a distinction between new order rights and old order rights. New order rights means are land rights which have been confirmed in terms of section 18 of the policy. Old order rights can be defined as rights to communal land which is formal or informal, registered or

unregistered. New order rights can be registered in the name of a person or community and in cases whereby title is transferred to a community, individual new order rights are not equal to individual title. The Act fails to provide the criteria for actual determination in terms of what counts as evidence in identifying an older right or procedures to be followed adjudicating multiple old order rights competing for recognition as a new order right (LEAP, 2005:18).

The transfer of land ownership can only occur when the land has been surveyed and registered. A right of enquiry is also conducted with the aim of investigating the nature and extent of existing rights and different interests in land and to ensure gender equality. After the whole process the Minister determines the location and extent of the land to be transferred, and whether or not the whole of an area or some portion of it should be transferred to the community. According to the Act the land may be subdivided and transferred to individuals, and a portion may also held in reserve for state use. The communal land rights act also requires for the community to establish a set of rules before land can be transferred. The establishment of such rules must be a set of regulatory rules that govern the administration and usage of land (Communal Land Rights Act, 2004:5).

2.4.4. Definition of Community and the Vesting of Rights

The CLRA confers land ownership to a community. The act defines the term community as a group of people whose rights to land are derived from shared rules which in turn determine access to land held in common by such group. In this sense, population areas under tribal authorities are viewed as the relevant communities within which this act applies. This act allows tribal authorities to act as land administration committees which represent the community and take decisions the community's behalf (Communal Land Rights Act, 2004:2).

2.4.5. Gender Equality

The Communal Land Rights Act makes provisions and commitment to enhance gender equity. This is in a sense that women are entitled to the same tenure rights as a man, and no laws, rules or practices may exclude women on the grounds of gender. The minister has jurisdiction to bestow new order rights on a woman even in cases whereby old order rights such as that of

Permission to Occupy Certificates were only given to men. The new order rights are issued to both spouses (Communal Land Rights Act, 2004:5). The communal land rights act has been criticized for excluding females who are not married as the act does not make provisions for such individuals (Cousins & Classens, 2006:9).

2.4.6. Constitution of Land Administration Bodies

The Act maintains that a community applying for a title must create a land administration committee to serve as representatives of that particular community owning communal land. The land administration committee must act in accordance with rules set out on the Communal Land Rights Act and it must also follow rules of the community. Duties of the land administration committee range from allocating land, maintenance of records, assist in disputes and interact with local government with issues pertaining to planning and development. In cases where by traditional authorities exist under the Traditional Leadership and Governance Framework Act (TLGFA) of 2003, the authorities are allowed to exercise the powers and functions land administration committees. There are competing views with regards to this part of the Act. The Act gives the right holders the right to choose a land administrative committee, while on the other it enables traditional authorities to act as land administration committees. Arguably the Act does not openly provide for choice, for example by setting out procedures and oversight mechanisms, which suggest that the latter interpretation is correct (Communal Land Rights Act, 2004:6).

2.4.7. Decision-making in Relation to Land

The CLRA allows land administration committees to make key decisions and exercise ownership powers on behalf of the community. An issue of consultation arises in this regard. The Act does not place responsibility on land administration committees to engage with the community members it represents with regards to decisions that may need to be taken in relation to land or rights of such land (Communal Land Rights Act, 2004:6). The Act does not set out explicit procedures to be followed for decision-making, but on the other hand maintains transparency is important and that democratic decision making must be in place (Cousins & Classens, 2006:10).

2.4.8. A critique of the CLRA

There are various concerns within the way in which policy interventions affect the public at ground level. The laws, the Communal Land Rights Act (CLRA) and the Traditional Leaders Governance Framework Act (TLGFA), has a major impact on the land rights of South Africans residing in rural areas and how such land rights are to be administered (LEAP,2005:17). The key policy objective of the Communal Land Rights Act is to transfer private land ownership to communities, after performing a thorough enquiry. The aforementioned procedure found in the CLRA has been heavily criticized reason being that the act endorses group rights more than individual rights. For instance the act defines the term community as those people living within tribal authority boundaries, that traditional councils would be recognized as land administration committees, therefore right holder in this sense would have no effective choice on this matter (LEAP, 2005:14). The Communal Land Rights Act has been criticized for being incongruent with the notions of a democracy. When the South African government initiated the communal land rights policy, the initial intention behind the policy was to provide secure property rights to aid development and extend democracy into rural areas under traditional administration and to ensure sustainable land usage for the future (LEAP, 2005:18).

In many pre-colonial tenure systems, it is argued, land rights were obtained from group membership. Decisions making regarding residential usage of land were made at household level and this included aspects like that of transfer of rights to others through inheritance, bequeathing, lending, sharecropping, sale and so forth. The Communal Land Rights Act takes power away from the individuals and gives it to groups instead and structural authorities. This shift is done at the expense of individual rights versus group rights and in this case group rights trump over individual rights (LEAP, 2005:16). It should be noted that the Communal Land Rights Act's attempt or effort combining land titling and recognition of customary land tenure has been widely criticized. The main argument here is that the combination of the both titling and recognition of customary tenure made land rights even less secure than originally anticipated (LEAP, 2005:17). Secondly land rights become poorly defined in a sense that ownership is transferred to a community held under tribal authority. Another pitfall that exists within the act is

the absence of adequate mechanisms to ensure a council's accountability to community members (LEAP, 2005: 18).

A second argument is more concerned with the requirement that outer boundaries must be surveyed and registered. The process has been described as overlapping with the character of land rights in communal areas. This implies that the implementation of the Communal Land Right Act at grass root level may intensify existing tensions and disputes over boundaries and further generate more tensions in areas which are relatively stable (Cousins, 2012:10). The constitution of South Africa is non-discriminatory, but provisions made within the Communal Land Right Act do not fully accommodate women (Mutangadura, 2004:9). In relation to the issue of gender equity, the Communal Land Right Act has been heavily criticized for undermining tenure security for female community members who are not married, such as divorcees, single mothers and unmarried adult sisters (Mutangadura, 2004:9).

It has been argued that women encounter discrimination within all tenure systems, be it customary or statutory (Mutangadura, 2004:9). There are various factors that hinder women from owning land these include; (1) the practice of customary law, which is an institution that discriminates against women. (2) Lack of female representatives in community land committees and a low level of participation in traditional community structures (Mutangadura, 2004:9).

In some rural areas women are not given the opportunity to participate in public meetings. Women's access to land and acquiring it is heavily dependent on whether or not she is able to convince the traditional authorities of her need for the land. There is also lack of clarity with regards to what rights can be claimed by divorced women, considering that they are no longer deemed as having joint rights (Cousins & Classens, 2009:12). The communal land rights act does give clear provisions to ensure that women are not discriminated against (Mutangadura, 2004:9). Despite the importance of land to women; women are still faced with the tenure. And this is due to gender biased that accommodates married women only and exclude single women; legal systems which are not accessible to women or which favour customary law over statutory law (African Women's Land Rights Conference, 2012: 21).

2.5. The role of Traditional Leaders in Democracy

It has been argued that the place and role of traditional leaders in South Africa's new democratic political system needs to be clearly defined. In some circles it was felt that more effort had to be made to try and accommodate traditional leaders in the country's Constitution. When the process of negotiations for a new democracy began at the Conference for a Democratic South Africa (CODESA) in December 1991, traditional leaders tabled their concerns that the new democratic Constitution needed to recognize their powers and functions (Ntsebeza, 2007: 75). Traditional leaders felt that the constitution does not inform them of their powers and future roles. The Communal Land Rights Act and the Traditional Leadership and Governance Framework Act are very inter-linked policies. The Communal Land Rights Act acknowledges traditional councils established under the Traditional Leadership and Governance Framework Act land committees.

2.5.1. Objectives of the Traditional Leadership and Governance Framework Act

The main objective for the Traditional Leadership and Governance Framework Act is to make provisions for the formation and acknowledgement of traditional communities, traditional councils, houses of traditional leaders and the Commission on Traditional Leadership Disputes and Claims. This process encompasses clarifying the functions and roles of traditional leaders and councils, and also providing specification with regards to their interaction with local municipalities (Traditional Leadership and Governance Framework Act, 2003:2).

This Act is largely based on the premise that the South African Constitution gives recognizes customary law and the institution of traditional leadership. The government endorses the institution of traditional leadership. The state has also ensured that the (Traditional Leadership and Governance Framework Act is in accordance with democratic values and gender equality enshrined in the Bill of Rights (Traditional Leadership and Governance Framework Act, 2003:2),

Hence thriving towards principles such as that of co-operative governance and fair system for the administration of justice. This act governs seven provinces that have areas under the jurisdiction of traditional leadership. A community is only deemed as a traditional community if it is held under traditional leadership and if it practices customary law. Once the community is

deemed as a traditional community it must create a traditional council comprising of at least 30 members, of which one third of must be women. A minimum of 40% members must be elected for a term of five years and the remaining 60% must be selected by senior traditional leaders. This is a procedure that has to be followed by traditional leadership (Traditional Leadership and Governance Framework Act, 2003:3).

2.5.2. Functions of traditional councils.

The Traditional Leadership and Governance Framework Act states different functions that need to be performed by traditional authorities. This consists of the following:

- a) Providing assistance to municipalities in the planning and delivery of integrated and sustainable development and other municipal services that need to be provided to communities (Traditional Leadership and Governance Framework Act, 2003:10).
- b) Administering the affairs of the traditional community in harmony with the traditions and customs practiced by that particular community (Traditional Leadership and Governance Framework Act, 2003:10).
- c) Working with the municipality to identify community needs and providing effective interventions that will contribute to community development and service delivery (Traditional Leadership and Governance Framework Act, 2003:10).
- d) Partaking policy and development discussions at local level (Traditional Leadership and Governance Framework Act, 2003:10).
- e) Encouraging the corporative governance and information sharing between the municipality and traditional council (Traditional Leadership and Governance Framework Act, 2003:10).
- f) Applicable provincial legislation must regulate the performance of functions by a traditional council by at least requiring the traditional council to:
 - Keep appropriate records of its administrative functions (Traditional Leadership and Governance Framework Act, 2003:11).
 - The traditional council's financial statements must be audited (Traditional Leadership and Governance Framework Act, 2003:11).

- The council must also disclose all gifts received from the public (Traditional Leadership and Governance Framework Act, 2003:11).
- The council must follow the appropriate code of conduct (Traditional Leadership and Governance Framework Act, 2003:11).

The traditional council must set up a meeting with the community at least once a year to give to give account of the activities and finances of the traditional council and levies received by the traditional council (Traditional Leadership and Governance Framework Act, 2003:11).

2.5.3. The relevance of Traditional authorities within democracy viewpoints of traditionalists versus Modernists.

At the heart of the controversy is the question whether traditional leadership fits into a democracy founded on human rights. The fundamental issue currently contradicting with the notion of democracy is the fixed boundaries that traditional authorities rule over (Bank & Southall, 1996: 424). The argument here is that people living under such boundaries do inherently lose their democratic rights since they have to adapt to the customs of traditional authorities. Traditional leadership is often viewed as an institution that hinders human right since it does not consider the needs of the individual for freedom and choice. Ntsebeza (2002:12) holds the view that recognition of a democracy and the rights of traditional leaders born to the throne is regarded as an ambiguity in the South African constitution, in a sense that, on one hand it acknowledges an autocratic entity, while on the other it embraces democracy. Debates on the future role of traditional authorities in a democratic South Africa have led to the emergence of two schools of thought namely modernists and traditionalists (Ntsebeza, 2002:14).

Modernists are largely concerned with human rights, democracy and gender equality. Modernists demand that traditional institutions must thrive to meet the requirements of a modern, non-sexist and non-racial democracy. This school of thought views traditional institutions as being in direct contrast to the resolutions of agenda 21 which supports a participatory governmental system. On the other hand, traditionalists emphasize that the institution of traditional leaders was throughout history at the heart of rural governance, political stability and rural development (Bank &

Southall, 1996: 424). They further argue that traditional leaders acted as symbols of unity to maintain peace, preserve customs and culture, resolve disputes and conflicts, allocate land (Ntsebeza, 2002:14).

Although democracy is the desired form of government the question is asked whether the social and economic condition of developing countries is conducive to that of democratic governance (Ntsebeza, 2002:14). The argument is that the theoretical legal security of ownership of land is the ultimate security that all people desire. However the policy fails to acknowledge the complexity of the lives of the Black rural masses residing in rural areas under Izinduna (Ntsebeza, 2002:14). It has also been argued that the structure and function of the traditional leadership institution must change in order to accommodate the new constitutional, social and political environments of post-apartheid South Africa (Bank & Southall, 1996: 424). This implies that effective guidelines need to be put into place to facilitate the co-existence and co-operation between traditional authorities and government structures. A balance must be attained between the need to retain the institution of traditional leaders on one hand and the practice of democracy (Bank & Southall, 1996: 424).

2.5.4. The land tenure challenge in the province of Kwazulu Natal

Kwazulu Natal is the most populous province in South Africa with specific regards to having a land administration system governed by Tribal Authorities, with more than one fifth (18%) of the country's total population. Also, this is one of the provinces that still use the customary tenure system as a tool for distributing and allocating land to people residing in rural areas. However Kwazulu natal only occupies 7% of the country's landmass. Eighty percent of the population is African and a large majority of this group lives in rural areas. The rural areas of Kwazulu natal make up the most economically and politically marginalized regions of South Africa and have been the location of complex tensions over land and other scarce resources for decades (Statistic South Africa, 2012:43). In KwaZulu-Natal the provincial government undertakes land administration somewhat differently from other provinces. Traditional authorities have continued to play the central role with regards to the distribution and allocation of land (Urmila, 2000:48). In this region, as is the case in many parts of South Africa, applications for land under the

redistribution and restitution programs are submitted via chiefs in the community (Department of Land Affairs, 1997:13).

Unlike restitution and redistribution, land tenure reform in the former Bantustans has been slow process to emerge. Tenure patterns in South Africa are complex and varied due, in part; to the coexistence of statutory and communal (traditional) systems. The Communal Land Rights Act (CLRA) extends private ownership of land to rural communities. Within areas of communally owned land it institutionalizes a register of new order rights vested in individuals. It allows an administration committee (Tribal Council) to exercise ownership powers on behalf of its community members (Republic of South Africa 2004). This approach of securing tenure for communities has received major criticism that it gives traditional authorities too much power (Cousins & Classens 2004:72).

2.5.5. Gender equity in KZN in relation to land tenure

In the context of Kwazulu Natal, the multiple burdens on women are particularly delicate due to women's economic dependence on men, reinforced by cultural traditions and religious practice that dictate women's relationships and roles in societies as well as relationships to resources. Cross and Friedman (1997:5) assert that women and men conceptualize land rights and land use differently. They argue that while men value land for its place in organizing social and political relationships, women view land mainly for its productive use. Given the scarcity of available land to African households, even with land reform initiatives men and women have to compete for land. As shown in the history of traditional authorities, the values and principles which define the institution are inherently patriarchal. Leadership, authority, inheritance and succession are largely the preserve of men. This does not sit easily with the formal values of gender equality, tied with constitutional rights to enforce them, which are a national entitlement flowing from South Africa's democracy (Urmila, 2000: 49).

Transformation informed by gender concerns has many implications for the institution of traditional authority. With regard to the question of land specifically, at least three key areas can be highlighted as requiring attention: namely, the extent to which traditional values and rules

unfairly discriminate against women in so far as they define (i) inheritance rights, (ii) land-use and access rights, and (iii) participation in local governance and decision-making. Historically the traditional rules-systems governing these matters has defined women's rights according to their relationship to men (in particular in terms of their marital status) and not in terms of their individual status as people, citizens and women in their own right (Urmila, 2000:50).

In the gender land assessment study that was conducted by International Centre for Research on Women (2011) it was found that in KZN rural areas there was a big gap in asset rights of men and women in Inanda and KwaDube area. In both sites, there was a substantial land ownership gap, with 70 percent and 85 percent of male respondents and 20 percent and 33 percent of female respondents owning land or housing. This meant that a high number of men had secure tenure compared to women in both areas. This shows that women are much less likely than men to own land, even when joint ownership is included, reflecting the persistence of patriarchal patterns of land ownership in the province of Kwazulu Natal. Therefore the study found major inequalities in women's and men's land and housing rights under communal systems and this is the challenge currently facing the province of KZN (Centre for Research on Women, 2011:6).

2.6. An international perspective on customary land tenure.

2.6.1. Zimbabwe

This section sheds light in the manner in which customary land tenure is administered in different parts of Africa. Comparison and contrast is made by drawing similarities and differences between the countries.

In the country of Zimbabwe there were two approaches that were used to secure tenure.

First approach: disempowering traditional authorizes and allowing non-traditional institutions to handle land issues.

Zimbabwe's approach to land tenure security dates back to the 1980s. Rural local government reform measures that were taken by the new Government of Zimbabwe during independence in

1980 were motivated by the states desire for modernization and creating a framework to redress the colonial imbalances for rural communities (Ncube, 2011: no page number).

In the 1980s communal land in Zimbabwe was administered by the state and traditional authorities under rules and regulations that specify access, use and control of land. The Communal Land Act (1982) defines communal land as comprising of all land which was Tribal Trust Land in terms of the Tribal Trust Land Act (Matondi & Dekker, 2011:15). The Titling in all Communal Land rested upon the President who had authority in terms of how the land is used and occupied in terms of the provisions act. This meant the individual could occupy the land at the president's discretion without being holders of land rights. The occurrence of land rights in communal areas occurred under certain conditions. Land could be transferred through marriage or when the landholder dies (Matondi & Dekker, 2011:15). To provide a clear understanding of land transfer issues of customary land tenure in Zimbabwe it is crucial to refer to the Communal Lands Act (1982), the Traditional Leaders Act (1998) and the Land Acquisition Act (1992).

It should be noted that during this first phase, unlike South Africa's Communal Land Rights Act where control of land is vested on the minister, Zimbabwe's communal land rights act vested ownership and control of communal land in the hands of the President (Matondi & Dekker, 2011:15). The country had devolved its land administration to district councils and district administrators under the Ministry of Local Government, Rural and Urban Planning. Basically district councils were responsible for land allocation and management in the rural areas of Zimbabwe (Ncube, 2011: no page number).

When comparing Zimbabwe's past approach land tenure the, case of South Africa's the situation was vice versa. In South Africa traditional authorities had and to this day they still have greater land allocation powers and district councillors have none. Whereas in Zimbabwe District councils had power to grant permits to occupy land for residential or agricultural use, in accordance to customary law and customary rights to land. The district councils are therefore the rightful land authorities. As much as the legal position as to whom should allocate land was very clear, at grass root level exists a form of conflict between the chiefs and district councils with regards to land allocation rights in Zimbabwe. This was mainly because in other areas chiefs,

headman, chiefs, ruling party village chairpersons and VIDCOs chairpersons, in fact did allocate land (Ncube, 2011: no page number).

There are different reforms that made traditional authorities powerless in Zimbabwe. Traditional authorities were dis-empowered by the Customary Law and Primary Courts Act of 1981, which formally transferred the determination of customary law from the Chief's Courts to new local bodies appointed by the Minister of Justice. While the government claimed to be in full support of customary law with specific regards to land access and utilization, it stripped all powers pertaining to land allocation away from the customary institution and vested it in elected local government institutions (Ncube, 2011:no page number). The implication here is that the application of customary law was now vested in non-customary institutions namely: the district councils. The introduction of the District Councils Act (1980/81/82), the Communal Lands Act (1981/82), and the Customary Law and Primary Courts Act of 1981, resulted in major changes which in turn left traditional leaders with no powers at all (Ncube, 2011: no page number). The enactment of the Customary Law and Primary Courts Act of 1981 also caused the chiefs to be further disempowered. This Act formally conferred the determination of customary law from the Chief's Courts to new local bodies appointed by the Minister of Justice, under the Act (Ncube, 2011: no page number).

The introduction of the participatory structure for peasant communities at sub-district level was another reform that disempowered the traditional institution even further. This reform introduced a legislation called the district local governance framework under the provisions of the Prime Minister's Directive on Decentralization of 1984 and 1985. Participatory bodies as elected bodies, the VIDCOs and WADCOs excluded traditional leadership structures and were generally accountable upwards to the rural district council, and not to their local constituencies. VIDCO's were responsible for assessing community needs and reported to the WADCO's which then reported such issues to the district councillor. Both of these participatory structures account upwardly to the district councillor only (Ncube, 2011: no page number). A question can be raised whether stripping away all land allocation powers from a traditional institution and transferring it to a non-traditional institution did indeed ensure secure tenure for all citizens? In the case of Zimbabwe the answer is no. The shift cause major tensions between elected government

institutions namely VIDCO's, chiefs and communities at large. The traditional authorities contested and took the issue to court.

Second approach to tenure security- Re-empowering traditional authorities.

The political move of re-empowering the traditional authorities made them even more powerful. The district councillors were stripped of all their power because they were now considered as weak. The enactment of the 1998/2000 Traditional Leaders Act now includes traditional authorities in development plans, allows them to allocate land and act as presidential appointees (Ncube, 2011: no page number). With regards to the issue of land tenure in South Africa, some scholars have raised a concern pertaining to the incompatibility between traditional leadership values and those of a democracy (Meer & Campbell, 2007:18). As much as a lot has been said by different scholars with regards to the incompatibility between the institution of democracy and the traditional institution, one may raise the concern of whether it would be possible to establish a governmental institution to successfully administer, allocate and ensure tenure security for individuals residing in rural areas in a manner eliminates conflict and political strife. There are crucial factors that need to be taken into consideration when trying to establish such an institution, namely some citizens look up to traditional authorities, chiefs are custodians of customs and traditions in rural areas and lastly this would result with the traditional institution losing its place and role in society.

Zimbabwe's Constitution makes provisions for a right to property and advocates for gender equity with the aim of ensuring that women have access to land. The country's land resettlement maintains that single women are entitled to 20% of distributed land. However, the Constitution also allows customary law and traditional practice to trump principles of equality between the sexes in matters of personal law. For instance according to customary law in Zimbabwe women lack legal basis to equal rights to inherit and hold land. This is also the case with the South African constitution which prohibits gender discrimination while on the other hand allowing the practice of customary law which limits women's access and participation to land related issues.

The social fabric of the rural society is not simple.

2.6.2. China's Approach to land tenure security.

Understanding the history of land tenure reform is important as it helps to reflect china's land tenure system. Before 1949, a large amount of land was owned by landlords, rich peasants and merchants. Ordinary peasants owned little or no land at all. The land revolution was led by the Communist Party which called for the redress in land distribution to ensure equal access to land. Land was taken away from the rich individuals and was given to peasants. This was form of private land ownership and the peasants did not have enough capital to use the land productively for economic gain (Zhao, 2010:8). The government introduced peasantry production organizations and this occurred in three stages. The first stage dates back to 1952 whereby primary agricultural cooperatives introduced with the aim of ensuring that the peasants benefit from the land they were occupying. The individual households continued to be landowners and were also cooperative members and benefited from their contributions (Zhao, 2010:8).

During the second stage in 1956, the primary cooperatives progressed into agricultural cooperatives. Private land ownership was replaced with collective landownership which meant the land now belonged to the whole group and all households became members of the households. In the last stage these cooperatives were changed into communes, and this was bigger institution that was characterized by collective land ownership (Zhao, 2010:8). The attempts to ensure that the peasants benefited from the land failed due to conflicts amongst the members with regards to land use. China response to the above failed intervention resulted to the introduction of the House Hold Responsibility (HRS) system in the year 1979. This is China's current land tenure policy and it is a state-led individual land tenure system called the House Hold Responsibility system (HRS). This system enables land to be distributed on a communal held basis (Zhao, 2010:8). This means that households are allowed to utilize and occupy land for a long period by complying with government rules involves paying tax for using land for agricultural purposes (Dean & Damm-Luhr*,2010:124). Land ownership is vested on the village collective. Farmland is divided among the different house holds for a variety of uses with the aim of ensuring that individuals benefit from the land which includes farming, forestry and grazing land. Failure to use the land productively results in ones plot for farming to be taken away and lease to contractors which results in tenure insecurity (Zhao, 2010:8). The households are given a

30 year land use contract and after 30 years they lose their land rights. The government can also claim land for other uses although the land is collectively owned by the village which in turn limits the people's access, control and management over land (Dean & Damm-Luhr*,2010: 124). South Africa's land tenure system shares certain characteristics with that of china, in a sense that policies that have been established grants individuals with land rights instead of landownership which is vested in a group collective. This implies that rural people cannot own land but have rights over land usage.

With regards to gender equality the Chinese Constitution ensures that women have equal right with men in all domains of life. The constitution also states that it states that women and men have equal rights to farmland, foundation plots for housing construction, and such rights are protected upon marriage and divorce (Duncan & Ping, 2001: 16). When compared to China, the South African constitution advocates for gender equity but does not fully make provisions for the protection of women's land rights. In sense that the only women who enjoy equal land rights are married women, the act fails to accommodate single women and it does not explain the extent of protection of these rights once the female spouse gets divorced (Communal Land Rights Act, 2004: 7). With regards to the inheritance of the land, the Chinese legislation allows for the inheritance of rural land rights, and establishes rights for women to inherit property through intestacy. This piece of legislation gives first preference to the spouse and then children and parents of the husband receive second preference (Duncan & Ping, 2001: 16). The inheritance of land rights in South Africa is a sensitive issue reason being that customary tradition does not give full recognition to women inheriting such rights through intestacy which means the spouse in such cases in not given first preference; instead the heir of the family inherits the land rights. In cases whereby there is no heir within the family, the brother of the husband gets to inherit the land rights.

2.6.3. Mozambique

Mozambique's approach to land tenure is one that respects the African customary law and in its land tenure strategy is allows local authorities to allocate land, resolve conflicts and manage resources. It also advocates for gender equity with regards to land rights (Burr, 2004: 2). The

1997 Land Law of Mozambique prohibits the sale of land and land belongs to the state. The implication here is that people occupying the land lack the ability to engage in private sale because land ownership is vested on the state (Economic Commission for Africa, 2003: 14). Unlike China whereby communities are given a 30 year land rights use contract, communities in Mozambique have permanent rights by right of occupation. For instance if community has been using the land they are occupying for 10 years then they have the land right for it. The new land law of 1997 is in accordance with Mozambique's constitutional principle that women and men possess equal rights with regards to land usage and occupation. It further states that women have the right to inherit land (Waterhouse, 2005:5). The act also allows local communities to secure land by applying for a collective title for land use including cultivation and grazing.

The 1997 Land Law Act of Mozambique allows for rural areas to be governed according to customary laws provided that such laws are in accordance with the Constitution of Mozambique (Economic Commission for Africa, 2003: 14). This raises the concern whether Mozambique has been able to implement such a policy successfully without necessarily creating tension between the traditional and non-traditional institutions at grass root level. And whether it is possible for places to be governed by customary law and still not considered as contradictory to the constitution. In Mozambique there are two types of customary systems namely patrilineal and matrilineal kinship. The matrilineal system is practiced by rural communities residing in the northern part of the country whereby women can inherit land rights from their mothers or sisters.

The patrilineal systems are mostly practiced in the central and southern part of Mozambique (Waterhouse, 2005:8). In this system inheritance occurs through the male bloodline, for instance from father to son. Women do not inherit land due to the fact that in the event of marriage the female leaves the family land when she marries and the only way for her to access land is through her husband and in case of divorce the woman loses the land rights. As much as the Mozambican constitution advocates for equal land rights between men and women in practice this is not possible when customary law is applied, a law that is fully acknowledged by the state. The implication here is that according to statutory rights women have equal land rights with that of men, but do not have equal land rights under customary law. This is also one of the challenges faced by women in South Africa. This is caused by the problem that most rural women do not

know their formal rights or have very little knowledge about their land rights (Waterhouse, 2005:8).

2.7. Conclusion

The main focus of this chapter has been to give a brief overview of the context of land reform in South Africa by looking at the three pillars of land reform namely redistribution, restitution and tenure and how the three pillars have manifested themselves at grass root level throughout the years. The section then drew more focus on the issue of land tenure as this is the main focus of this dissertation. The history and context of tenure reform in S.A shed light in terms of how different policies have been designed to address issues pertaining to land tenure security for people residing in rural areas under traditional authorities. Tenure reform in communal areas/rural areas is a very complicated process because it involves the improving land rights which must be done in accordance with constitutional values, democracy and transparency. Central to tenure reform is the issue authority over land matters and the development of proper institutional frameworks for land administration (Cousins, 2012: 9). Therefore the discussion of the Communal Land Rights Act of 2004 and the Traditional Leadership and Governance Framework is discussed with the aim of assessing whether the two inter-related policies have indeed secured tenure and clarified the role of traditional authorities in relation to land administration. Of critical importance was the review of challenges pertaining to land tenure in the province of Kwazulu Natal. The section also looked at the different approaches that have been used by other countries to secure tenure for individuals residing in rural areas. The preceding chapter shall look at decentralisation and social capital with specific context to the country of South Africa.

CHAPTER THREE: THEORETICAL FRAMEWORK

3. Introduction

Many African countries reviewed their land policies and legislation and instituted fresh approaches. Land management in the sub-Saharan region of Africa have placed lots of emphasis on decentralization at local level with the aim of addressing land governance problems created by the conflict between state laws and customary rules and practices. The assumption is that local land tenure institutions have more understanding of local practices and are better equipped for attending to local issues (de Satgé et al, 2011:9). The Issue of democratic decentralization and rural development has raised controversies considering the manner in which the state intervenes in rural society in South Africa, particularly in relation to the governance of land administration in native lands. In an attempt to decentralize administrative activities the post 1994 government separates different functions performed by local government with the aim of making them accountable and encourages active participation (Ntsebeza, 2004:74). The South African government also devolved some of it land administration function to traditional authorities (Ntsebeza, 2004: 74).

A concern raised by some scholars is in relation to the incompatibility between traditional leadership values and those of a democracy (Meer & Campbell, 2007:18).

In this chapter the issue of decentralization will be examined with particular focus to the manner in which the state has intervened in securing tenure for citizens residing in rural areas under the authority of Induna (Chiefs). The theory of democratic centralization is also discussed in conjunction with the theory of social capital.

3.2. Definition of Decentralization

The term decentralization refers to the redistribution of power and authority over decision-making and land and resource management functions between central, regional and local levels of governance and other actors, including traditional institutions, user associations or village committees, together with other organizations of civil society and the private sector (de Satgé et

al, 2011:6). Decentralization in its broadest form aims at changing the manner in which central and local government interact with each other in order to enhance service delivery and development, while simultaneously enabling participation (de Satgé et al, 2011:6).

3.2.1. Decentralized land governance

A particular contradiction is said to exist in South Africa's post 1994 Constitution. On one hand it seeks to be a state that practices democracy while on the other, it gives recognition to an institution which is regarded as undemocratic. Post-apartheid South Africa embarked on an important democratization process that included reforms in local government and land administration in the former Bantustans (Ntsebenza 2005: 76). The process of democratic decentralisation in South Africa can be described as a greatly complicated one, mainly because it underlies a social capitalistic approach which in turn acknowledges the existence of tribal authorities.

The communitarian school of thought argues that land reform must revert to the traditional land tenure system and this view is founded on the concept of social capital which was promoted by James Coleman (Coleman, 1988:97). Social capital is regarded as the advantage that individuals gain from their social networks. According to communitarians insecure tenure is a result of two aspects: state led policies which ignore traditional values and individualized property rights that marginalize rather than empower. This means that when the notion of social capital is applied to land tenure, it enables a clearly defined process which ensures that all citizens enjoy secure tenure rights to land (Obeng-Odoom, 2012:162). Social capital can be defined as norms and networks that facilitate collective action. Social capital consists of two dimensions namely, networks and norms. The term network relates to social relations and interactions amongst individuals or within groups (Jochum, 2003:7). While the term norms relates to the established rules of behaviour or standards of conduct and the shared understandings or values held by a group of people including trust and reciprocity (Jochum,2003:8). Communities residing in rural areas use land administration systems of shared values and customary practices. This form of land administration system regulates access; control and the usage of land. Izinduna/chiefs make administrative decisions in relation to land issues. The South African government

promotes social capital and has therefore given traditional leaders platform to exercise power in rural areas, especially in the key area of the administration of communal land (Cousins, 2007:46). The application of social capital in relation to land tenure is not without criticism. The first criticism is the restriction of individual freedom. For instance community with strong social capital may apply control over its member which results in a high level of conformity and lack of individual autonomy. Secondly, strong ties amongst a community may result in social exclusion and this means that powerful members may restrict access for the others. For instance Izinduna (chiefs) have been accused of abusing their powers and this contradicts the notions rooted in the concept of social capital which is commonly regarded as the advantage that individuals derive from their social networks (Obeng-Odoom, 2012:162)

Lutz and Linder argue that traditional authorities do not follow the system of good governance such as social inclusion, human rights, accountability, and conflict resolution and state building which are a prerequisite of a decentralised democratic system. Social inclusion is often hindered by traditional authorities who often are, and work for older males (Lutz et al, 2004:34). Young people and women are hardly given an opportunity to be part of traditional institutions. Moreover, new members are often excluded the arrival of newcomers to that particular society is usually excluded from representation or power sharing under traditional authority (Lutz et al, 2004:34).

Furthermore, international human rights are usually not part of the systems of traditional authority. This implies that certain groups, such as women, youth, and minorities are underprivileged in traditional systems. Since traditional authorities undertake duties such as that of religious and political functions, and act in executive and judicative functions, their decisions can hardly be appealed or evaded. In many societies, traditional/customary law and state law including human rights exist side by side and are frequently in contradiction/conflict (Ntsebeza, 2005: 78). Accountability is limited regarding the exercise of traditional authority. Traditional leaders mostly hold their position for life time. Even if they perform poorly, there are no set procedures for poor performance. In theory and practise, such community leaders can hold their position without being responsive to community members considering that they do not have to face periodical democratic elections (Ntsebeza, 2004:33).

The notion behind democratic decentralization is that of transferring power to authorities which means that these authorities must be to be downwardly accountable to local populations. The aim is to increase public participation in local decision-making. Advocates of this kind of arrangement believe that locally accountable representatives with real public powers and greater community participation will increase efficiency and equity in the use of public resources. Traditional authorities in the past have received criticism for being collaborators and stooges for the apartheid regime (Ntsebeza, 2004:35). The 2003 traditional leadership and governance act is founded on the premise of aligning traditional rule and traditional councils with the principles of democracy and to also remove stigma associated with traditional institutions. This is what one may refer as the first genuine attempt to try and fuse democratic practices with traditional practices (Meer & Campbell, 2007: 3).

3.3. Relevance of Traditional authorities

The recognition of the institution of traditional authorities raises many concerns about the nature of democratic decentralization in the rural areas under traditional authorities. In particular, it raises the conceptual question of whether an inherently undemocratic, hereditary institution can exist in a South African democracy, based on the liberal tradition of what one may refer to as representative democracy. On the other hand, South Africa's constitution enshrines democratic principles on its bill of rights, while on the other recognizing political roles for unelected and unaccountable traditional authorities, which is regarded as contradictory and inconsistent with the notions of democratic decentralization and also with the notions of a liberal representative democracy. This contradiction also raises questions about the possible resolution of the identity of rural inhabitants in the former Bantustans in post-1994 South Africa. The issue here is whether rural residents will continue to be subjects under the political rule of un-elected traditional authorities, or will enjoy citizenship rights, including the right to choose leaders and representatives, that the South African Constitution confers on all South Africans (Ntsebeza,2003:16).

3.4. Conclusion

The South African government is faced with the challenge of striking a balance in the creation of policies that respect customary practices and possess democratic characteristics to ensure that citizens residing in native land may have secure tenure just as the designed policies promise. Some scholars maintain that democratic decentralization is incompatible with the institution of chieftaincy. This raises the question of the relevance of the institution of traditional leadership in contemporary democracy. Other scholars hold the view that the institution of Traditional leadership can only be viewed as relevant to a democratic society only if the nature of its political judgment is also democratic. The hereditary nature of authority and unelected rulers can be overlooked if leadership and decision making involves the direct participation and contributions of the citizens, an authoritarian, dictatorial approach cannot. Therefore traditional leadership can only be relevant to democratized society if its contribution to society is democratic. In other words, the relevance of traditional leadership can only be judged on the contribution it makes to the achievement of an accountable and efficient democratic system of governance and if its fundamental objectives are democratic (Meer & Campbell, 2007: 13). The preceding chapter draws focus of research methodology that was employed in this study.

CHAPTER FOUR: METHODOLOGY

4. Introduction

The purpose of this chapter is to give a brief introductory discussion of the research methodology used in the dissertation.

4.1.1. Research methodology

Babbie and Mouton (2006: 647), define research methodology as methods, techniques and procedures that are employed in the process of implementing the research design or the research plan as well as the underlying principles and assumptions that underlie their use. This research shall employ the qualitative research method since the main objective of the study is gaining knowledge and understanding of the land tenure reform process from the view of the community of Sweetwater, traditional authorities and government officials involved in the tenure reform program.

This research paradigm seeks to understand human and social behaviour from the insider's perspective, that is, as it is experienced by the participants in a particular social setting. Qualitative method can be described as the usage of interpretive techniques that describe, decode, translate and come to terms with the meaning of naturally occurring phenomena (Babbie& Mouton, 2006: 647). The qualitative research method will therefore enable the researcher to gain knowledge and an understanding of the experiences of the research participants with regard to the implementation of the land tenure reform program in the area of Sweetwater.

4.2. Research Design

According to Babbie and Mouton (2001:647), a research design is a plan or structured framework of how you intend conducting the research process in order to solve the research

problem. This study will employ primary and secondary data to conduct research. Therefore primary research involves the researcher undertaking the data collection himself/herself, and secondary data involves the researcher identifying an existing dataset which has been collected from a previous study based on the conceptual analysis covering a spectrum of themes, literature concepts, theories and relevant legislation, books, journal articles and internet websites.

Primary data in this research study consists of data in a form of semi structured interviews for land tenure participants, Councillor, Deputy Chairperson of the tribal council, an official from the department of land affairs and rural development and a female representative from the Association for Rural Advancement that deals with women's land tenure issues. A focus group discussion technique also used to engage with the tribal committee representatives from kwaNxamalala and kwaMpande. Secondary in this study involves the identification of existing data such as that of books, scholarly journal articles, newspapers and electronic sources collected from relevant previous studies.

4.3. Data collection process

This study employed qualitative research techniques of in depth interviews for land tenure participants and a focus group discussion for the key informants of the tribal committee representatives from kwaMpande and kwaNxamalala. The main reason for choosing in-depth interviews as a data collecting technique is that it gives the researcher more flexibility to focus key themes, issues, and questions that the investigation aims at addressing. In the study Open-ended questionnaires were used because they allowed respondents to include more information, such as feelings, attitudes and understanding of the subject issue at hand. Using open ended questions also gave the researcher better access to the respondents true feelings and perspective. A number of 10 females and 10 male participants from kwaMpande and kwaNxamalala were interviewed with the aim of exploring different challenges experienced by women and men in relation to land tenure. The research investigation also employed the use of focus group discussions as a method of data collection. The main reason for employing such a data collection technique is that it allowed the researcher to facilitate discussion around a set schedule of questions pertaining to the questions that the investigation aimed addressing. It also gave the

researcher the opportunity to stand back from the discussion watch participants share their similar or different experiences; this is where group dynamics also emerged (Babbie & Mouton, 2006, p.48).

4.4. Snowball sampling

The research study used snowball sampling as selection method to select the participants. Snowball or network sampling is used to obtain a sample when there is no adequate list to use as a sampling frame (Babbie & Mouton, 2006, p.48). This is a type of method which involves contacting of a population to be studied and asking them whether they know anyone else with the required characteristics. The sampling method was relevant to the research study because the study aimed at targeting participants who were involved in same kind of network with others involved in tenure reform issues.

4.5. Data Analysis

Data was analysed by extracting common themes and problems in relation to tenure security. The analysis also highlighted perspectives from government officials and their views on how the land tenure program could be improved for the community. In the study, the interviews were recorded and transcribed. A series of notes were also taken during the data collection process. Individual responses from the research participants were compared and contrasted and interpreted to draw conclusions.

4.6. Ethical Considerations.

Ethical considerations for this research were considered as important because the data was gathered through interviews with members and representatives of identified case study communities. Interviewees' request for anonymity was accepted and identity protected. Since the study required volunteers, a detailed explanation of the aims and objectives of the study was provided to the participants. The participants' voluntary participation in the study was also outlined from the outset, and participants were made aware that they had a choice to leave the

study whenever they felt uncomfortable. Undue pressure on interviewees to divulge information was also avoided. With agreement to participate individuals will have to fill and sign an informed consent letter that states the above. The information gathered is to be used purely for academic purposes. It was most importantly highlighted that there was no financial or any other forms of compensatory benefits to be accumulated from partaking in the study. For the purposes of this research, children were not interviewed nor surveyed during the data collection process. Participants were presented with an ethical clearance form which clearly stipulated the terms and conditions of their participation and were ensured protection of identity. In other words the identity of participants was protected through coding names, and they were also imparted that participation was to be voluntary and that withdrawal from the study did not attract any adverse consequences. It was also most importantly stated that there were no benefits to be accumulated from participating in the study.

4.7. Limitations of the study

Questions designed for this study were written in English, but to eliminate language barriers for participants who did not understand English, the questions were translated to IsiZulu. This served as a potential limitation because some of the meaning in the original language might have been lost during the translation process and led to incorrect interpretation. This limitation was dealt with by ensuring that during the translation process, questions were translated in a manner which conveyed clear meaning to what the study was seeking and that participants clearly understood them. A challenge experienced during the conduction of this study was that translating the data into English was relatively difficult in a sense that there are some IsiZulu words that cannot be directly translated into English. For example there instances where the participants would say the same thing in different ways in a sense that when it had to be translated into English it sounded the same because finding the correct words and ensuring they applied to the context was difficult.

Secondly it was difficult getting the participants to talk because some of them thought the questions were part of a private investigation. In the methodology, the aim was to have all the interviews recorded and transcribed, however for the majority of the interviews the tape recorder

was left out because the participants said they did not want the conversation to be recorded. As a result a series of notes were taken. In other instances some participants were lost due to their political affiliations with the traditional authorities in the area. For instance some participant's did not want to participate because there were other participants they did not get along with, due to political differences. Lastly some of the key informants were highly suspicious and asked why this specific area of study had been chosen.

4.8. Conclusion

This section has briefly discussed the research methodology that shall be employed on this research undertaking. It should be noted that the preceding chapter will provide an analysis of data obtained from the presented study.

CHAPTER FIVE: ANALYSIS AND INTERPRETATION OF DATA

5.1. Introduction

This chapter seeks to provide an analysis of data obtained from the present study. The data has been gathered through a series of individual interviews and a focus group discussion. It is estimated that about 15 million South African reside in rural areas under traditional leaders. The South African government gives recognition to traditional communities and leaders under chapter 12 of the constitution. Literature reveals that there is still no clear link between the government's rural local structures and traditional leadership in rural development (Hagg & Kanyane, 2013:141). Tenure reform in rural areas is a complicated task, in a sense that it involves strengthening rights, in terms of law and practice. This must be done in accordance constitutional values such as rights to equality, democracy, accountability and transparency. The South African government is faced with the challenge of striking a balance in the creation of policies that respect customary practices and possess democratic characteristics to ensure that that citizens residing in native land may have secure tenure just as the policies promise. This chapter shall present empirical findings based on interviews administered with the Local district councillor, Deputy Chairperson of the Tribal Council, a representative from the Association for Rural Advancement (AFRA), a focus group discussion with the Tribal Committee from kwaMpande and Nxamala. A series of 20 interviews were also carried out within the community. The analysis will be presented within the theoretical framework of the study and a discussion shall follow after that.

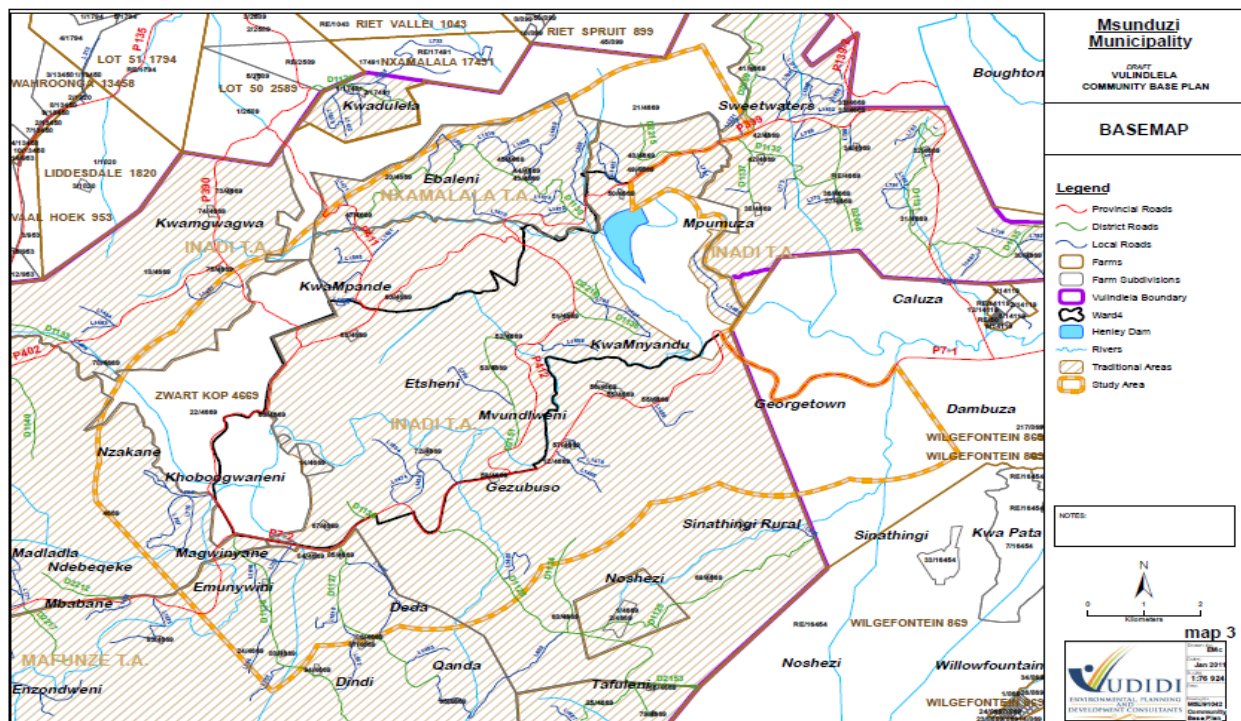
5.2. Back information of the research site.

The area of Sweetwater is situated to the west of Pietermaritzburg and northwest of the Greater Edendale area and its falls under the Vulindlela district. The majority of the land belongs to the Ingonyama Trust and is headed by traditional authorities. The Sweetwater area is very rural and under developed. The Vulindlela district is made up of 9 wards; the areas leadership consists of

ward councillors’ and Amakhosi (kings). The area of Sweetwater has five kings reigning in these areas, namely Mafunze clan, Inadi clan, Mpumuza clan, Nxamalala clan and lastly the Ximba clan.

The landscape and buildings in the area of Sweetwater are quiet distinctive from those found in townships. Houses are built along mid-slopes of hills and along flatter roads. The average size of a homestead in such rural areas is not the size of a match box but rather a cluster of two to three dwellings, with thatched rondavels and an area for ploughing. Focus of this study is on two areas of Sweetwater, namely the area of kwaMpande and kwaNxamalala which are ruled under one king. In the two areas there are chiefs that head different areas of the village who are responsible for the allocation, management and administration of land. The chiefs form a tribal council that gathers on a monthly basis to review and discuss community issues. The council consists of thirty members and is responsible for solving disputes and maintaining peace in the community.

Figure 5.2.1: Geographical Map.



Source: Msunduzi Municipality community based plan report for Vulindlela ward 4, 2011:12).

5.2.2. Population

In 1996 the ward had a total population of 13745 people and this population increased in 2001 to 14325 and 14893 people in 2006; this population is anticipated to increase to 15484 people in 2011 and up to 1 6710 people by 2021.

year	1996	2001	2006	2011	2016	2021
Population	13745	14325	14893	15484	16099	16710

Source: (Stats SA, 2001).

5.2.3. Area of Sweetwater



5.3. Background information on the participants.

Table one: Male ages

Age	No. of Participants
20-30	1
31-40	3
41-50	2

51-60	3
Over	1
Total	10

According to the above table indicates that there were 3 respondents from the age group between 31 and 40, two respondents from the age group 41-50, three respondents from the age group 51-60, one respondent for the age group over 60 and also one respondent from the age group between 20-30.

Table two: Females

Age	No. Participants
20-30	2
31-40	4
41-50	2
51-60	2
Over	None
Total	10

The above table indicates that there were two female respondents from the age group between 20-30, four respondents between the ages of 31-40, two respondents between the ages of 41-50, two respondents between the ages of 51-60 and lastly there were no female respondents over the age of 60 that participated in this study.

Table three: Marital status of the males.

Marital status	No. Participants
Single	2
Married	8

Total	10
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The above table demonstrates the marital status of the respondents as this serves as a very important prerequisite for individuals wishing to secure land in rural areas. The data reflects that out of 10 participants that took part in this study, eight were married and two were single but in the process of getting married soon.

Table four: Marital status females.

Marital status	No. participants
Single	5
Married	5
Total	10

Table 4 reflects the marital status of the females who took part in this study. The data shows that out of ten participants five are married and the other five participants are single (three are not married; the other two consist of a widow and divorcee).

5.4. Interview Questions for the participants

5.4.1. Procedure for securing tenure in the Area of kwaMpande and Nxamalala and amount one pays.

Who is responsible for securing tenure in this area?	Responses from male participants	Responses from female participants.
Chief	All ten members responded that the chief is responsible for securing tenure.	All ten members stated that the chief of the area is responsible for tenure security.
Councillor	-	-
Total	10	10

The above table demonstrates that chiefs are solely responsible for tenure security and therefore if an individual wishes to secure tenure this can only be done in consultation with the chief of that particular area and not the district councillor. Participants also stated that after acquiring the land they are given a period of 6 months to build houses and failure to do so results in losing the land.

5.4.2. The khonza fee

Both males and females paid a fee called the khonza fee to secure the land. Bambezakhe stated that when he was trying to secure tenure in the area he had to pay a fee called umkhonzo. Now for clarity purposes, paying this amount does not necessarily mean paying for the land, it a fee that one pays to show gratitude to the King for giving me the piece of land. After acquiring the piece of land one is required to host a braai and get acquainted to the people from the area. During the focus group discussion the key informants from the tribal council clarified that the amount paid by individuals during the tenure process goes to the king and is used for administrative purposes. The tribal council was also asked how the price for the khonza fee was determined. The council stated that the price was determined by hectors of the land. In some cases the fee is not the same. For instance if a person wants to build a church or a shop the price will not be the same when compared to a person who wants to build a house. The prices differ from place to place because the kings determine the khonza fee price and that is why the prices vary. The council also stated that king’s office was currently undergoing different strategies to ensure that in future the price be the same for all areas in Sweetwater.

5.4.3. Payment of the khonza fee

How much is the khonza Fee?	Amount paid by male respondents	Amount paid by female respondents
R700	8	10
R500	1	-

R400	1	-
Total	10	10

The above table indicates that the amount that one pays in order to secure land varies. It should be noted that in the above table prices vary. For instance out of the ten male participant's eight male respondents paid an amount of R700. For the other two male respondents, one paid R500 and the other one paid R400. This highlights that there is no stipulated amount, therefore the amount changes from time to time and place to place. The period of time that one has stayed in the area is also a determinant of the amount. The amount paid by the 10 females was the same, namely R700.

5.4.4. Documents received after securing tenure.

What documents did you receive after securing tenure?	Responses from males	Responses from females
Permission to Occupy	All of the males stated that they received a document called Permission to occupy document after having undergone the procedure for securing tenure.	All of the females stated that they received a document called Permission to occupy document after having undergone the procedure for securing tenure.
Other		
Total	10	10

The above table demonstrates that both males and females received a permission to occupy document after full adherence of the procedure for securing tenure. The permission to occupy document is a very important document because it is the letter which allows the individual to occupy and use the land.

5.5. Access to land for males and females.

The South African Bill of rights encourages equality between males and females and frowns upon gender discrimination (South African Land Rights Bill, 1999: 23). According to the male participants there is certain criterion that one has to meet if they wish to secure tenure in the area of Sweetwater. The chief requires for one to be married or be in the process of getting married. Data shows that a number of eight participants are married and this is how they managed to acquire and secure the land. When the male participants were asked about the requirements that men had to meet order to acquire land majority of the males stated that marriage was the inherent requirement for securing tenure in the area. Thembinkosi stated that traditional authorities require for one to be married or be in the process of getting married in order to secure tenure. The other two participants were only able to secure land because they are in the process of getting married. Siphso also concurred with Thembinkosi by saying that traditional authorities require for one to be married or be in the process of getting married. He also emphasized that the chief does not give out land to people who are not married or people who do not intend on getting married. The criterion for females is not the same and the difference is that out of the ten female participants, seven of the females are married and their spouses went to the chief to secure the land, which means that females do not have direct access or equal opportunity in tenure security. Nonkonzo a married participant maintains that when she and her husband wanted to secure tenure, the husband is the one who went to the chief. It should also be noted that out of the ten female participants in this research study, a number of three female participants did manage to directly secure tenure as single unmarried women, however it was not easy. Sindisiwe a single mother of two states that:

“As single woman , unmarried it was very difficult for me to secure tenure but I ended up being able to do so only because I have a son, as this is one of the things that chiefs look at when a woman is in need of land”.

The data also highlights differences in terms of access to land between men and women in the area of Sweetwater. Men are not restricted in terms of securing tenure in the area, whereas for women it is relatively difficult to get traditional authorities to give them land due to the biased

criterion put in place. The key informants were also clear that the procedural criteria used for men and women were different and there were reasons for such.

5.5.1. Reasons for having different procedural systems for men and women by Key informants.

When asked why the procedure was different for men and women the key informant, Thabani a member of the traditional council stated that there are two factors that come into play. Married couples are given first priority in terms of getting land. In other cases a young woman is only able to secure tenure if she has a son. He further stated that the traditional council does not give land to people who are not married, be it a man or woman. One of the reasons for the council not giving land to individuals who are not married is because it will be trying to avoid conflict in a sense that the person may behave badly and do bad things. Like a single young woman may start dating married men within the area. Hence this is one of the reasons the traditional council only gives land to married individuals. Members from the focus group discussion also shared the same view. For instance during Sbongiseni stated that the traditional council does give exception to certain cases whereby the woman is an orphan or has a son then that woman is given land because of such circumstances. But generally the traditional council does not give land to community members who are not married. This demonstrates the manner in which the traditional council treats both sexes in sense that men have direct access to land and only one criterion is used to determine that access, whereas with women there must be a dire need for the land and the woman's circumstance determines that particular access to land. The representative from the Association for Rural Advancement (AFRA) Sinegugu stated that one of the reasons for the restriction of women when it comes to land is that people from rural areas perceive males as head of households and not women which in turn gives the male more authority in the household.

5.6. Effectiveness of the land tenure procedure.

Effectiveness of the land procedure	Male responses	Female responses
Satisfied	All 10 males found the procedure effective	4 Females found the procedure ineffective
Not satisfied	-	6 Females found the procedure ineffective
Total	10	10

The above table draws comparisons between male and female participants with regards to the effectiveness of the land tenure procedure in the area of Sweetwater. The participants were asked if they found the land tenure procedure effective. Majority of the male participants said they found the manner in which tenure is secured effective. Sixty percent of the females said they found the procedure ineffective. Thandiwe stated as follows: *“I am not satisfied with the procedure reason being that the system oppresses women”*. The participants also stated that the land tenure procedure restricted unmarried women from acquiring land in the area. Other female participants raised the concern that the manner in which things are done places women at a disadvantage and that they would like things to be done differently when it comes to tenure security. However, during the focus group discussion, when the traditional council was asked whether they found the method they employ for tenure security effective they said yes because the government had not yet complained about the manner in which land is allocated. This meant the method was therefore effective. One of the key informants from AFRA Sinegugu stated that the administration of land tenure is effective to some extent. However the manner in which land is administered in rural areas tends to put women at a disadvantage because it is only men that can acquire land without facing any hiccups. She highlighted that it is relatively hard for women to secure tenure in communal areas to secure tenure.

5.7. Women’s level of participant in the tenure reform program

The participants were asked about the level of women’s participation with regards to land issues.

What is the level of participation for women in the land tenure program?	Reponses from males	Responses from Females
Women have limited involvement	3 male respondents stated that women have limited involvement in land tenure issues.	2 female respondents stated that there is limited involvement of women in land tenure issues
Women are not involved in land tenure issues.	7 male respondents stated that women play no role in land tenure issues	8 female respondents stated that women do not participate.
Total	10	10

The above table depicts the different responses provided by participants when asked about women’s level of participation in the land tenure program. Women stated that land issues are mostly discussed by men in the area of Sweetwater. This is due to the fact that Sweetwater is a rural area which upholds traditional values and it is also a highly patriarchal community which in turn restricts women’s involvement in certain things. One of the participants, Vusumuzi, when asked about the level of women’s participation in the land tenure program stated that stated that: *“there is no role played by women pertaining to land tenure issues because a woman must know her place, in a sense that men do not discuss such issues with women”*. He then made an example that in other areas the traditional authorities do not directly speak to women, if there is a problem that needs to be addressed, the women is asked to bring a male figure to represent her because she is not allowed to represent herself. Eight out of ten females stated that females do not participate in land issues in a sense that land issues are discussed by men. Some of the female participants explained that the practice of cultural traditions and patriarchy are two main factors that hinder women’s participation in the land tenure program. Two out of ten female participants stated that women have limited involvement in land issues due to the community being patriarchal and traditional. This means that women are not involved in land tenure but men are

more in involved. When the males were asked about the level of women’s participation in the land tenure program, seven out of ten males stated that women do not participate in land tenure issues as men were the ones who dealt with such issues. The other three out of ten male participants stated that women had limited involvement in land issues. This highlights a gap between policy and practice in a sense that as much as legislation encourages equality with regards to opportunities, in communal areas equality is not prevalent and therefore not practiced.

5.8. Factors that hinder women’s participation in the land tenure program.

Factors that hinder women’s participation in land tenure	<u>Male responses</u>	<u>Female responses</u>
Cultural traditions	5 male respondents stated that the practice of cultural traditions hinders women’s level of participation.	7 female respondents highlighted the practice of cultural tradition as a hindering factor
Patriarchy	5 male respondents responded in a manner which highlighted male superiority over females	3 females respondents stated that males are viewed as more superior to women and this serves a hindering factor
Total	10	10

The above table depicts different hindering factors that hinder women from fully participating in the land tenure program in the area of Sweetwater. When the male participants were asked to state factors which they thought hindered women’s participation in the land tenure program 5 out of ten male participants stated that the practice of amasiko / isintu (cultural tradition) served as hindrance on women’s participation. The other five out of ten male participants responded in a manner that highlighted the belief that males are more superior to women and this also serves as a hindering factor as it restricts women to certain activities that they can do. For instance one of the male participants stated that he could not see why women needed to be involved in land tenure issues as such issues were only discussed by men. The female participants were asked which factors they thought hindered women from participating in the land tenure program, seven

out of ten female participants stated that the practice of cultural tradition in the area served as a major obstacle to women's participation in the land tenure program. The other three out of ten female participants stated that males were seen as more superior to women and therefore this served as a hindering factor to women's participation in land tenure issues.

5.9. Achieving Gender equity and patriarchy.

How can gender equity be achieved in the land tenure program?	Male responses	Female responses
Gender equality (should men and women be equal)	7 male respondents stated that women and men cannot be equal at all.	5 female respondents stated that gender equity could only be achieved by changing the manner in which things are done, giving women more land rights and changing the mind-set of men residing in rural areas.
Difficult / impossible to achieve Gender equity due to traditional customary practices	2 male respondents stated that nothing can be done and it's not possible to achieve gender equity in rural areas	5 female respondents o stated that it would be difficult/ impossible to achieve gender equity among males and females in rural areas due to the prevalence of traditional customary practices
No response	1 male respondent Did not want to respond to the question	-
Total	10	10

The above table provides a reflection of what the participants think with regards to gender equity. Seven out of ten male participants stated that women and man cannot be equal, while five out of ten female participants stated that gender equity can only be achieved by changing the manner in which things are done, giving women more land rights and changing the mind-set of men residing in rural areas. Two out of ten male participants stated that nothing can be done to achieve gender equity in rural areas in relation to land tenure security. Five out of ten female participants stated that it would be difficult to achieve gender equity among males and females in rural areas due to the prevalence of customary practices. The above table provides a depiction of different perspectives whereby patriarchy still serves as an impeding factor in women’s participation even in modern society.

5.9.1. Challenges in relation to land tenure.

What are the challenges in relation to the tenure reform program	Responses from males	Responses from females
Exclusion of women	1 male respondent highlighted the exclusion of women in the land tenure reform program.	7 female respondents stated that the exclusion of women in land tenure issue is a major challenge that needs to be addressed.
Good and bad relations between chiefs and district councillors impact on development	2 male respondents stated that bad relations between the chiefs and councillors had a major impact of development.	No responses
Slow pace of development in rural areas		1 female respondent stated that the slow pace of development is a challenge.
No challenges that there participants were aware of pertaining to land tenure.	7 male respondents stated that are they could not think of any challenges in relation to land	2 female respondents stated there were no challenges they could recall in relation to land

	tenure.	tenure
Total	10	10

The above table provides a reflection of the different challenges that the community of Sweetwater is currently facing in relation to land tenure. Two out of ten male participants stated that good and bad relations between chiefs and district councillors had major impact on development in a sense that such relations can bring development to a halt. One male participant stated that the exclusion of women in land issues is also a challenge that the community is currently facing. Seven out of ten male participants stated that there were no challenges that they could think of in relation to land tenure. While on the other hand seven out of ten female participants when asked about the challenges pertaining to land tenure stated that the exclusion of women in the land tenure program is a challenge that needs to be addressed. One out of the ten female participants highlighted the slow pace of development as another challenge which needs government intervention and the other two female participants stated that there were no challenges in relation to land tenure that they were currently aware of.

5.9.2. Challenges highlighted by key informants pertaining to land tenure.

When the key informants were asked to explain the different challenges they encounter in the tenure reform program, Wandile the district local councillor of kwaMpande and Nxamala stated that one of the challenges that they as district councillors face, is resistance from chiefs that think that local district councillors are here to take over their roles. The district councillor also stated that lack of communication was also a challenge. For example the chief may place someone without informing the local district councillor and the councillor would only find out when the person now needs electricity and water. And the councillor further stated that there have also been instances whereby traditional authorities would also place people in areas that have been reserved for developmental purposes by the municipality. Another challenge that was highlighted by member of the traditional council Thabani was in relation to conflicts over land and this was due to the huge influx of people moving away from cities and back to rural areas, which causes conflict amongst individuals over land.

Another challenge that was highlighted during the focus group discussion with the key informants is in relation to the traditional council’s relationship with the Ingonyama trust. The traditional council explained that there has been case whereby the king of the area tries to utilize the land and Ingonyama Trust comes and tells the king that he is not allowed to use the land and this is done without any consultation.

The Ingonyama Trust is a corporate entity that was established in 1997 to administer traditionally owned land by the king for the benefit, material welfare and social well-being of the Zulu nation. The board of trust comprises of the following members: Zulu king (the chairman), currently Goodwill Zwelithini kaBhekuzulu, and eight members appointed by the Minister of Rural Development and Land Reform in the national government, after consultation with the King, the Premier of KwaZulu-Natal and the chairperson of the KwaZulu-Natal House of Traditional Leaders. The Trust owns at least 32% of the land in KwaZulu-Natal, about three million hectares, occupied by over 4 million people (Government Gazette, 1997: 1)

Hence the traditional council believes that a good working relationship with Ingonyama trust would make the whole process easier. The key informant from AFRA stated that one of the challenges pertaining to land tenure is that as much as legislation has been set out, at ground level traditional authorities are doing things their way and not working in accordance with policy guidelines that they are supposed to follow, which results in the gap between policy and practice. The key informant further stated that we also have to understand that in rural areas the people are too traditional as there are chiefs, so obviously a man will be considered more superior than a woman.

5.9.3. Land Sales

Are you allowed to sell the land?	Male responses	Female responses
No land sales are not allowed	4 male respondents stated that land sales are not allowed.	4 female respondents stated that the chiefs do not allow for land to be sold.

Allowed to sell your house but not the land	4 male respondents stated that the authorities allow one to sell their house and not the land.	5 female respondents stated that the chief allows people to sell their houses and not the land.
Unaware about such information	2 male respondents stated that they did not have knowledge pertaining to land sales.	1 female respondent stated that they do not have enough knowledge pertaining to land sales in the area.
Total	10	10

The above table indicates information pertaining to land sales. When the participants were asked whether they did have an option to sell the land after securing tenure, a number of four out of the ten male participants stated that land sales were not allowed, in conjunction to this, four out of ten female participants also affirmed that land sales were not allowed in the area of Sweetwater. It should be noted that four out of ten male participants stated that traditional authorities only allowed community members to sell their houses and not the land. Five out of ten female participants also affirmed that individuals were only allowed to sell their own houses and not that land. A number of two male participants and one female participant stated that they did not have knowledge pertaining to the issues of land sales, in a sense that they do not know whether they are allowed to sell land or not. The responses provided by both the male and female participants do highlight the fact that they cannot/ are not allowed to sell the land as it does not belong to them to begin with. When the Deputy Chairperson of the traditional Council was asked whether they did allow people to sell land, his response was that an individual is allowed to sell the house provided that he/she is leaving. Therefore people did have the right to sell their houses but not the land. During the focus group discussion with the traditional council member, the response to the issue of land sales was that a person is granted to sell the house which belongs to them as the land does not belong to them.

5.9.4. Community empowerment

<u>How is the land tenure program empowering the community</u>	<u>Male responses</u>	<u>Female responses</u>
Through community developmental projects which creates job opportunities	7 male respondents stated that the community is currently being empowered through garden projects and Infrastructural projects carried out by the municipality.	8 female respondents stated that the community benefits through developmental projects such as garden projects and road construction projects.
Do not see how the land tenure program is empowering the community	2 male respondents stated that they cannot see how the land tenure program is providing community empowerment.	1 female respondent stated that they do not see how the land tenure program is empowering the community
Do not know how the land tenure program is empowering the community.	1 male respondent stated that they currently cannot see how the land tenure program is empowering the community.	1 female respondent stated that they couldn't see how the land tenure program was empowering the community.
Total	10	10

The above table provides a reflection of responses from the participants. When the participants were asked to explain how the land tenure reform program was empowering the community, seven out of ten male participants and also eight out of ten female participants stated that the community benefits through garden projects and infrastructural projects brought in by the Msunduzi municipality. Two out of ten male participants and one female participant stated that they could not see how the land tenure program was empowering the community of Sweetwater. One male and one female participant stated that they did not know the land tenure program was empowering the community. During the focus group discussion the key informants were asked how they were using the land tenure program to empower the community. Thoko who is a female member of the traditional council stated that there are projects that are used to empower

the community such as garden projects whereby they work with women and the community at large. Sbongiseni also stated that the community is informed when there are going to be projects especially developmental projects because those create job opportunities for the community. Thabani who is the Deputy Chairperson of the traditional council stated that there are projects currently being implemented in the community. There is an RDP housing project, a road construction called DOP411 and the last project is called 1130. When there are projects the local district councillor communicates such information with the traditional council and this is how the community benefits.

5.9.5. Conclusion

The present chapter contains analysis and interpretation of data. Data was collected by means of individual interviews and a focus group discussion. The information was presented by providing responses from the different participant in the form of tables which reflects on similarities and differences in opinions. The analysis and interpretation of data provides a reflection that there is a struggle when it comes to making provisions for a unitary and non-discriminatory system for the allocation of land in rural areas under Tribal Authorities. For instance the high prevalent usage of patriarchy in rural areas places women at a disadvantage when it comes to acquiring land. There is a wide gap between formal and informal law used govern the process for land administration and providing tenure security to all without discriminating anyone. The South African government has provided policies to ensure equal tenure security for all; however such policies are not in line with realities at ground level. The next chapter draws focus on factors or problems currently affecting the community of Sweetwater with specific regards to the implementation of the land tenure program.

CHAPTER SIX: DISCUSSION

6. Introduction

The land tenure reform is one of the three legs of the Land Reform Programme (LRP) as described in the 1997 White Paper. Tenure reform is aimed at achieving two distinctive objectives. The first being to alter the state of land administration in the communal areas of the former homelands and coloured reserves and the second objective is to provide secure tenure for farm dwellers (Land reform policy discussion, 2012: 9). For purposes of this discussion, more focus will be drawn towards the first objective of the land tenure program which involves addressing land administration in communal areas. This will be achieved by reviewing to policies namely the Communal Land Rights Act of 2004 and the Traditional Leadership and Governance Framework and analysing these in alignment with data collected from the study. This is done with the aim of assessing whether policies provided by government are in line with realities at ground level.

There are two policies that guide the process of land tenure in rural/communal areas, namely Communal Land Right Act 2004 (CLRA) and Traditional Leadership and Governance Framework Act of 2003 (TLGFA).

The state in accordance with the constitution established a policy called the Traditional Leadership and Governance Framework Act of 2003 with the aim of setting norms and standards which seek to define the place and role of traditional leadership within the new system of democratic governance (Leadership and Governance Framework Act, 2003:3). The idea was to ensure that the institution is in alignment with constitutional values while also simultaneously restoring the integrity and legitimacy of the institution of traditional leadership. Within the preamble of this policy, is the advocacy for the prevention of unfair discrimination and non-sexism, promotion of equality and the advancement of gender representation (Leadership and Governance Framework Act, 2003:3). The communal land right act of 2004 was established with the aim of making provision for legal security of tenure by transferring communal land,

including KwaZulu-Natal Ingonyama land, to communities, or by awarding comparable redress; to provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights; to provide for the democratic administration of communal land by communities; to provide for Land Rights Boards; to provide for the co-operative performance of municipal functions on communal land (Communal Land Right Act,2004: 2).

6.2. Issue of exclusion and inclusion.

The data demonstrates that women are less involved in the tenure program when compared to men. The contributing factor to the lack of participation is traditional beliefs that males have with specific regards to the role of a female in the community. When the participants were asked to discuss factors that hinder women's participation in the land tenure program, a majority of the males and females stated that the practice of *amasiko* was one of the factors that hindered women from participating. Mzikayise, one of the participants interviewed in the study answered this question by saying that:

“I don't know the factors, but I also don't see why women should be involved in land issues”.

Khuzwayo also stated that women do not play that much of a role in land issues in area because such issues are discussed by men of the area. When women were asked what factors hindered their level of participation in the land tenure program a majority of the women stated that of the females highlighted the practice of cultural tradition as a hindering factor.

Thandiwe, a female participant in this study stated that:

“As a woman who resides in the area, woman do not participate that much in issues pertaining to land. Men participate more in land issues compared to women and one of the reasons for such is because this area respects custom and tradition. And in past land issues have always been discussed by men and women have had very little to say as this is regarded as a men's field of expertise”.

Section 25 (6) of the South African constitution maintains that a person or community whose tenure of land is legally insecure due to past racial discriminatory laws or practices has a right to secure tenure or comparable redress (Communal Land Right Act,2004:5). This means that the current mechanisms driving the tenure reform program are in breach of section in the constitution in relation to race and gender in a sense that women are discriminated against due to the prevalent practice of patriarchy in the rural areas of Sweetwater. This also contradicts the government's quest for creating a traditional institution that leads people in a democratic way.

6.3. Delamination of responsibility.

The key informants were asked to state their roles in the procedure for securing tenure. Wandile who is the local district councillor for kwaNxamalala and kwaMpande explained that his involvement only occurs after the chiefs have secured tenure for individuals. His role is in relation to development only, which means that he is not involved in the land tenure process. When asked whether there has been confusion with specific regards to the different roles they play, Wandile stated that:

“Yah definitely especially for them because with our roles at least as councillors we are taken through workshops, we do capacity building workshops so you know we don't interfere with that. For example I cannot at any stage promise a person a site and tell them to pay the amount directly to me because I know that is not my role. But with them (traditional authorities) you will hear that they have called a community meeting and will talk about the construction of roads and when people start asking questions he will not have answers because he doesn't deal with development, so we do have such problems.”

When the participants were also asked about the coordination between both parties majority of them stated that the traditional authorities were solely responsible for the allocation of land, while the municipality was in charge of developmental projects. Wandile said that one of the methods that the traditional council is currently using to ensure that there is clear delamination of responsibilities between parties is that both the traditional authorities and local district councillors form part of the traditional council and meet on a monthly basis to brief one another

and discuss pending issues. This highlights that both parties have a clear understanding of their roles. Except in a few cases whereby traditional authorities over step, as the above example made by local district councillor Wandile provides a clear illustration that sometimes there confusion in terms of roles.

6.4. Group rights versus individual rights and the issue of alienability.

One of the prescribed functions of traditional councils is administering the affairs of the traditional community in accordance with customs and traditions and statutory laws (Leadership and Governance Framework Act, 2003: 5). The Communal Land Right Act gives traditional authorities the power to exercise ownership of land on the behalf of the community. The issue of land ownership versus land rights is a very controversial issue for citizens residing in communal areas (Leadership and Governance Framework Act, 2003: 5). The data revealed that the layered character of land administration is one dimensional, in a sense that it is focused only on one socio-political institution namely the chieftaincy. The participants and key informants were asked to discuss the issue of alienability of land in this study the participants stated that they were allowed to their house but not the land because it belongs to the king and hence the restriction on alienability of land. The key informants also stated that community members were allowed to sell their property but not the land, and it was made very clear that such a person can only sell the house provided that they are leaving the area.

During the focus group discussion with the traditional council, Sifiso who is part of the council stated that:

“What normally happens in such cases is that, yes the house belongs to you but the land belongs to the king. Therefore you may only sell the house provided that you are leaving and we do not interfere with the process. But when you have left the place it is your duty to inform us that you have sold the house and you then introduce us to the new person.”

Ntokozo the local district councillor also stated that a person is allowed to do whatever they want with the land; they can plough and bury their loved ones in the yard. The person is allowed to

sell his/her house but they cannot sell the land because it does not belong to them. Japhet who is also a member of the traditional council shared the same sentiments with Ntokozo by affirming that if a person wants to sell, they only allowed to sell the house which belongs to them as the land does not belong to them.

Japhet further stated that:

“Khonza fee that people pay is not payment in exchange to the land but is just payment for showing gratitude to the king for allowing them to use the land. Some of the participants stated that they were not allowed to engage in land sales as they were not allowed to do so.”

The establishment of Communal Land Right Act and the Leadership and Governance Framework Act centralizes power at the level of traditional councils and makes absolutely no arrangement for decision making at family level. This means that the community has no say in relation to decisions concerning land matters (Pillay et al, 2013:141). The most prominent feature of systems of property is ones freedom to make decisions about the property one owns. Now under customary systems of property decisions relating to land are decided by traditional authorities and this restricts the individual’s ability to make their own decisions (Pillay et al, 2013:141). The community of Sweetwater is unable to make decisions pertaining to land tenure reason being that the process of decision making with regards to property issues can only be discussed by the traditional council (Pillay et al, 2013:141). For purposes of this discussion it is also important to make a distinction between *land access* and *land rights*. Land access can be defined as one’s ability to utilize, control and transfer the rights to the land with the aim of taking advantage of other opportunities that may be available to him/her (International Fund for Agricultural Development, 2008:28). It should be noted that there are three main rights interrelated to the spatial dimension of land rights: use rights; control rights; and transfer rights. Use rights refer to the right to use land for residential use, growing crops, passage, grazing animals etc. The term control of rights is concerned with decision making pertaining to land usage. Lastly transfer of rights can be defined as the right to sell or mortgage land, transfer land to others, transfer the land through inheritance and to modify the use and control rights (International Fund for Agricultural Development, 2008:29). One of the key informants stated

that: *“persons are allowed to do whatever they want with the land”*. It should be very carefully noted that the community of Sweetwater only has the right of land usage after having accessed the land through a procedure governed by the traditional authorities. Issues pertaining to control and transfer of land are mainly under the jurisdiction of the tribal council. The narrow criterion used by the traditional authorities in the area of Sweetwater of who is eligible for securing tenure further more excludes individuals in terms of ethnicity, race, sexual orientation and lifestyle.

6.5. Undemocratic nature of the process.

Current legislation demonstrates that the government believes that a constitutionally aligned traditional leadership can be an effective partner in the promotion of democracy and service delivery. President Zuma openly supported traditional leaders at the 2011 opening of the national house of traditional leaders and declared that:

“Government was indeed not mistaken in ensuring that for the first time in the history of South Africa amakhosi [kings] are recognized by the constitution of the Republic as one aspect of leadership that contributes effectively to the democracy of our country....Traditional leaders have an important role to play in identifying community needs, local economic development needs and to channel these needs through integrated development planning processes” (GCIS, 2011: 4).

As much as the South African government endorses the existence of traditional authorities, some Scholars have raised a fundamental concern that the traditional institution hinders the process of creating an accountable and efficient form of democratic governance. This is based on that fact that the institution of traditional leadership is founded on historically un-elected chiefs who are unaccountable, undemocratic and autocratic (Ntsebeza, 2004:68). This implies that the incorporation of traditional leadership into the South African system of governance is an attempt of trying to reconcile two fundamentally different institutions and which undermines the democratic process. Arguably it is difficult from a democratic perspective to see the need for traditional authorities in modern democratic society. This is primarily due to the fact that the principles which guide the institution of traditional leadership are contradictory to that of a

democracy (Meer & Campbell, 2007:9). The following quote was taken from Ntsebeza's article highlights this point.

“While the initial collaboration was around local government, it is quite clear that the main issue that brings traditional authorities together is their opposition to the notion of introducing new democratic structures. They would be happy to be the only primary structure in rural areas and insist on preserving the concentration of functions they enjoyed under apartheid, in particular land administration. Not only are they opposed to the idea of separation of powers, they are also opposed to any attempt to introduce alternative structures that would compete with them. For example, in the case of local government, traditional authorities reject the introduction of municipalities in their areas. They argue that they should play a central role in rural development, and by implication, they reject the democratic principles upon which post-1994 developmental local government is based” (Ntsebeza, 2004:66).

The notion of democracy is defined as an institution that prioritizes the individual's right to exercise their choice and freedom. The South African Constitution is underpinned by the same definition of democracy and human rights (Sithole & Mbele, 2008:5). In 2005 Thomas Koelble wrote a working paper entitled 'Democracy, Traditional Leadership and International economy of South Africa

Koelble used the following arguments to explain the incompatibility between democracy and the institution of traditional leadership in South Africa:

- Describes traditional leadership as a system which allows for the inheritance of leadership which is incompatible with democracy (Koelble, 2005:63).
- States that traditional leadership should be abolished and the main reason that the institution is still flourishing is because rural areas are still lagging behind when it comes and the government still gives full recognition to this system despite its contradiction with democracy (Koelble, 2005:63).

- According to Koelble (2005:63) democratic values and economic proposed by different global discourses will help aid local establishment of democracy and eliminate undemocratic forms of governance such as that of traditional leadership.
- The traditional institution of leadership may have supporters due to their cultural relevance, however the principles of rational democracy requires for the State to ensure access to democracy as a commodity to which all citizens are entitled (Koelble, 2005:63).

During the focus group discussions the participants explained that the traditional leadership institution has undergone some changes which mean that things have changed to some extent. Thabani affirmed that:

“Previously the king would appoint his own council but now 60% of the members are chosen by the king and 40% is chosen by the community. Right now things within the council are flowing very well and it is easy to work with one another. The king is the senior and the deputy person is a very young person too which in turn makes the working process easy”.

This does not make much difference because the majority of the members are still chosen by the king and not by community members. The basis of democracy is founded on the notion that all citizens must be able to influence the process and therefore the traditional leadership institution’s power and authoritarian nature limits community members from exercising their democratic rights since 60% of the members are chosen by the king.

6.6. Traditional leadership and public participation: facilitator or hindrance?

Traditional leaders still possess a considerable amount of power in communities and this implies that they have the ability to express the will of their people or suppress it. Public participation is a crucial factor in the practice of democracy. In its simplest form public participation can be defined as the process of giving ordinary people a meaningful opportunity to exercise voice in matters that have direct effect on their daily lives. According to Buccus, Hemson, Hicks and Piper (2007:3), public participation is an important tool because it improves development and service delivery. Data in this study revealed that there is a low level of community participation

in land tenure issues. In addition decision making pertaining to tenure security is taken up by traditional leadership only and not in consultation with the community, even though the procedure for securing tenure does have a direct bearing and impact of the community members of Sweetwater. For instance when the traditional council was asked who it accounts to, Ntokozo stated that:

“If the community is unhappy, the district councillor is the one who deals with such issues. If the community needs things like sports grounds and roads, the community is able to voice their concerns during community meetings”.

When the issue of accountability was raised, the traditional council responded to the issue from a developmental perspective, although the question was more focused on whether the community was able to complain about the processes used by the traditional council for tenure security in the area. Accountability refers to mechanisms put in place to sanction leaders for poor performance (Lutz & Linder, 2004: 23). The members of the traditional council were hesitant to directly address the issue of accountability. This hesitation may signify that the traditional council does not account to anyone if they are not questioned for their actions within the public sphere. There is also no policy designed by government to ensure that the traditional council accounts for their actions. Another factor that serves as a hindrance to public participation is the lack of understanding from the traditional council with specific regards to land ownership. The traditional council does not view the land as belonging to the whole community. An example to substantiate on this issue is with specific reference to land sales.

The following quote is a response from Japhet who is a member of the traditional council which highlights this point: *“The king’s land cannot be sold”*. This means that such perception also hinders the process of public participation as a prerequisite for democracy. The mere fact that the traditional council does not perceive the land as belonging to the whole community enables the traditional council to exclude the community from participating in decision making relating to land tenure in the area of Sweetwater.

6.7. Gender equity and the practice of patriarchy

The preamble of the Traditional Leadership and Governance framework advocates for the promotion of equality and non-sexism. The process occurs in a twofold system namely by ensuring women and men receive equal opportunities and that there is absolutely no discrimination in such a process (Leadership and Governance Framework Act, 2003:3). Data collected in this study demonstrated that the procedure for tenure security does not provide equal opportunities to men and women; instead it places the other men at an advantageous position to that of women in relation to land access. This is evident when the key informants were asked if the procedure for men and women were the same in relation to securing tenure. The answer was no, the key informants stated that there were different criteria that both sexes had to meet in order to secure tenure. Wandile the councillor in charge of kwaNxamalala and kwaMpande stated:

“Eh the procedure is not the same, normally according to the prescribed procedure, according to the king; you can only qualify to get land on the basis that you are a married man. Eh but for women depending on cases, the traditional council has been transformed because there is now that portion that the community directly votes for, so one can say that due to such changes there is now a bit of leniency on the cases of women, if I may call it that way whereby a person’s circumstance and neediness is taken into consideration, then you may qualify to get the land depending on those circumstances as a woman. But normally if you’re a man, you must be above 18 and be definitely married. But if you’re a woman and at least have a son at least from the age of 13 and upwards, then depending on your situation, maybe in cases whereby your children are outsiders and not originally from kwaNxamalala your case will be reviewed on the traditional councils monthly meeting.”

When asked whether there was a different procedure for men and women the area, Thabani also stated that:

“A married man and woman are given first priority in terms to getting land. In other cases as a young woman you are able to secure tenure provided that you have a son. But we generally do

not give land to people who are not married, be it a man or woman. One of the reasons we do not give land to individuals who are not married is because we will be trying to avoid conflict in a sense that the person may behave badly and do bad things. Like a single young woman may start dating married men within the area. This is one of the reasons we give land to married individuals.”

During the focus group session with the members of the traditional council, when the members were asked whether the procedure was different for securing tenure they also said the process for tenure security is different for men and women in terms of securing tenure. Ntokozo who is also a local district councillor in the area and a member of the traditional council stated that land is given to married individuals. In the case of a woman who is single the council looks at whether she has a son and in the case of the male who is single the council looks at things like who the male planning on living with, now that he wants a piece of land. Majority of the participants stated that marriage was the criterion that traditional authorities looked at in order for one to secure tenure. The criterion used to create land access for both males and females has different bearings. For example as a woman one needs to have a son in order to gain access to land, this implies that woman who has daughters cannot access land at all unless they are married. This criterion places some women at a disadvantage.

The data also depicted that in the case of females who were married most of them managed to secure tenure through their spouses, in a sense that their husbands were the ones who went and spoke to the chiefs. When the male participants were asked how they managed to secure tenure, majority of them managed to do so because they were either married or single but in the process of getting married. This means that men are the ones who have direct access to land because there is only one criterion which applies to them namely being married or single but in the process of getting married. The also demonstrated clear bias towards women in a sense that women. The other female participants who managed to secure tenure only managed to do so because some of them had sons and the others were given exception because of circumstances they were under.

Chapter 2 section 4 of the Communal Land Rights Act stipulates that:

“a woman is entitled to the same legally secure tenure, rights in or to land and benefits from land as is a man, and no law, community or other rule, practice or usage may discriminate against any person on the ground of the gender of such person” (Communal Land Rights Act, 2004:10).

Information provided by the data shows that community rules do disadvantage women on the basis of gender. For example when the traditional council was asked why the single women could not secure tenure the following reason was given by the Deputy Chairperson Thabani was that the council tries to avoid cases whereby the single women may date married men from the area and create conflict. When the chairperson was asked to state ways in which the council was embracing gender equity he affirmed that:

“In terms of gender equality we do consider it and in some cases you will find that a woman may have children out of wedlock and if the woman has a son we give her land on that basis because if you have a son you will not behave in a bad way. We do not oppress women. Secondly in terms of work relations we respect women and that is why you find that in the Nxamalala clan we do have women that are chiefs”.

Women’s access to land if they are single is largely determined by their circumstance whereas with men the traditional authorities do make an exception and allow single men to secure tenure provided that they do plan on getting married. The Traditional Leadership and Governance Framework also advocates for gender equality, however the data depicts that community rules/customary traditions are practiced at ground level and trumps over statutory laws that traditional authorities are ideally required to follow. In the study the participants were asked how they thought gender equity could be achieved in the land tenure program and responses provided by the participants were interesting. Majority of the males were of the view that according to Zulu culture/Amasiko (customary tradition) a man and woman are not equal and they will never be equal.

One participant Thembinkosi stated that:

“A male and female cannot be equal but they must just respect one another”.

Bambezakhe also concurred by stating that:

“Nothing can be done to achieve gender equity; yes the government says we are equal but in terms of customary traditions and practices men and women will never be equal. Things are done according to customary practices here”.

Khethiwe a female participant stated that:

“It is difficult for South Africa to achieve gender equity because customary law favours men and this oppresses us as women”.

This demonstrates that there is a high level of patriarchy in the area of Sweetwater in a sense that men still see themselves as more superior to women. The practice of traditional culture also exacerbates things for women in a sense that they are restricted in terms of access to land. When women were asked how they thought gender equity could be achieved they stated that equity could be achieved by changing the manner in which things were done in communal areas and also by government granting women more land rights, particularly in relation to land issues. Women felt that the current mechanisms used to secure tenure need to change because it restricts them from securing land, in a sense that the system that’s currently in place favours men.

6.8. Conclusion

The analysis reflects on the factors or problems currently affecting the community of Sweetwater with specific regards to the implementation of the land reform program. The next chapter provide conclusions and recommendations on the issue of land tenure in South Africa.

CHAPTER SEVEN: CONCLUSIONS AND RECOMENDATIONS

7. Introduction

The aim of this chapter is to provide a conclusion and recommendation. It should be very carefully noted that conclusions and recommendations drawn from this study cannot be used to make generalizing statements. This is mainly due to the nature of the methodology used in the study, which was chosen to provide valuable information and a better insight into the system of land tenure in the area of Sweetwater. It is crucial to emphasize that there already exists a vast amount of literature on the subject of land tenure in South Africa and conclusions have been drawn by these various studies.

7.2. Conclusion

This study concludes that both the Traditional Leadership and Governance framework and the Communal Land Rights Act were established with the aim of creating a place and role for traditional leadership within the new system of democratic governance and transforming the institution in accordance with South Africa's constitutional principles and values. The quest for the institutionalization of democratic governance, values of an open and democratic society and gender equality were the notions that the South African government was seeking to advance when it gave full recognition and jurisdiction for traditional authorities to govern the land administration process in rural/communal areas. The institution of traditional leadership was also expected to govern according to the principles envisaged in a democracy. Ideally when the traditional authorities were given platform, the idea was the creation of an institution that upholds customary practices and possesses democratic characteristics so as to ensure that that citizens residing in native land may have secure tenure just as the designed policies promise. The findings in this study revealed that the policies are not in line with the *de facto* realities that communities face at ground levels.

The data findings revealed the following challenges: limited public participation in decision making processes, the undemocratic nature used to implement tenure security, and a high level of gender inequality and patriarchy with specific reference to the provision of equal opportunity among men and women to secure tenure. Historically the institution of traditional leadership is highly patriarchal in nature and this implies that values which define such an institution do not coincide with the government's constitutional values and principles which flow from South Africa's democracy.

7.3. Recommendations

In view of the findings and the discussions provided, literature reveals that South Africa is still faced with the challenge of developing effective tenure reform mechanisms to provide proper tenure security to citizens residing in communal areas under the jurisdiction of *Amakhosi*. The notion of democratic decentralization is intended to produce superior outcomes such as that of promoting equity, improving the quality of citizenship, enhancing public participation and producing greater outputs on service delivery (Sithole & Mbele, 2008). According to Ntsebeza (2005: 76) the process of democratic decentralisation in South Africa can be described as a greatly complicated one, mainly because it underlies a social capitalistic approach which in turn acknowledges the existence of tribal authorities. In particular, many academics have raised a concern, whether an inherently undemocratic, hereditary institution can exist in a South African democracy, based on the liberal tradition of what one may refer to as representative democracy. On the one hand, South Africa's constitution enshrines democratic principles on its bill of rights, while on the other recognising political roles for unelected and unaccountable traditional authorities which is regarded as contradictory and inconsistent with the notions of democratic decentralisation and also with the notions of a liberalist representative democracy (Classens, 2004: 35).

In summary, we need to develop and advocate for a more appropriate approach to securing tenure. This has to be one which:

- Identifies, recognizes the different layered characteristics and incompatibility between customs and democracy.

- Find strategies that enhance the integration of both institutions.
- Enhances and empowers communities
- Promotes equal access opportunities to land for both men and women.

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Annexure A: Interview schedule for the male and female participants

1. English: What is the system for securing land in this area?

IsiZulu: Umuntu wenza njani uma efuna umhlaba kulendawo?

2. English: Explain the procedure that one follows to secure land?

Isizulu: Yimiphi imithetho elandelwayo ukuze umuntu athole indawo ekungeyakhe?

3. English: For how long does one have to wait in order to have their land secured?

Isuzulu: Umuntu ulinda isikhathi esingakanani ukuze athole indawo?

4. English: Is there documentation that one receives after one secures the land?

Isizulu: Ingabekhona incwajana/ipheshana elitholakalayo emuva kokuthi umuntu eseyitholile indawo?

5. English: How effective is the participation of women with regards to land issues compared to that of men?

Isizulu: Lingakanan iiqhaza elibanjwe ngabantu besifazene kwezomhlaba uma uliqhathanisa nabantu besilisa?

6. English: How effective is the procedure for securing land?

IsiZulu: Ugcwalisekile ngemithetho elandelwayo uma umuntu efuna umhlaba? Iyakusebenzela lendlela ekwenziwa ngayo?

7. English: Explain the role played by both the Municipality and Traditional Authorities in terms of securing land?

Isizulu: Ngicela uchaze ngendima edlalwa umkhandlu kanye noMasipala?

8. English: To what extent has the tenure reform program empowered the community of Sweetwater?

Isizulu: Umphakathi usuzuze ngakanani mayelana nezinto eziphathelene nomhlaba kulendawo?

9. English: What are the challenges pertaining to the issue of securing land in this area?

Isizulu: Yiziphi izinselelo enihlangabezana nazongendaba yezomhlaba?

10. English: How can these challenges be addressed?

Isizulu: Lezizinselelo zingaxazululwa kanjani?

11. English: How does the coordination between government departments, traditional authorities and community impact on the success of the land tenure program?

Isizulu: Ungathi ubudlelwano phakathi kwamasipala, izinduna, izikhungo zikahulumeni, Kanye nomphakathi kunomthelela ongakanani empumelelweni yezomhlaba?

12. English: What are the main factors that you think may inhibit women from participating in the land tenure?

Isizulu: Yiziphi izinto ezidala abantu besifazene ukuthi bangadlali indima enkulu kwezomhlaba?

13. English: In your opinion do you think the current mechanisms used to implement the tenure reform are effective?

Isizulu: Ngokwakho ukubona, ingabe indlela ekutholakala ngayo umhlaba iyakusebenzela kulendawo?

14. English: In your opinion, how can gender equity be achieved in South Africa's land tenure program?

Isizulu: Ngokwakho ukubona yini engenziwa ukuze abantu besilisa Kanye nabesifazene bagcine sebelingana ngokwezomhlaba?

15. English: Are you allowed to sell the land?

Isizulu: Kuvumelekile ukuthi umhlaba uwudayise?

Annexure B: Interview schedule for focus group discussion for the tribal council.

1. English: What is the system for securing land in this area?

Isizulu: Umuntu wenza njani uma efuna umhlaba kulendawo?

2. English: Explain the procedure that one follows to secure land?

Isizulu: Yimiphi imithetho elandelwayo ukuze umuntu athole indawo ekungeyakhe?

3. English: For how long does one have to wait in order to have their land secured?

Isizulu: Umuntu ulinda isikhathi esingakanani ukuze atholei ndawo?

4. English: Is there documentation that one receives after one secures the land?

Isizulu: Ingabe kukhona incwajana/ipheshana elitholakalayo emuva kokuthi umuntu eseyitholile indawo?

5. English: Is the procedure the same for men and women in terms of securing tenure?

Isizulu: Ingabe imithetho elandelwa ngabantu besifazane Kanye nabesilisa iyafana yini?

6. English: Explain the role played by both the Municipality and Traditional Authorities in terms of land tenure reform?

Isizulu: Ngicela ungichazele indima edlalwa ngumasipala Kanye nezinduna?

7. English: To what extent has the land tenure program empowered the community of Sweetwater?

Isizulu: Umphakathi usuzuze ngakanani mayelana nezinto eziphathelene nomhlaba kulendawo?

8. English: In your opinion what are the challenges pertaining to land tenure at grass root level?

Isizulu: Yiziphi izinselelo enihlangabezana nazo ngendaba zomhlaba?

9. English: How can these challenges be addressed?

Isizulu: Lezi zinselelo zingaxazululwa kanjani?

10. English: In your opinion do you think the current mechanisms used to implement the land tenure program are effective with specific reference to tenure?

Isizulu: Ngabe indlela ekutholakala ngayo komhlaba iyakusebenzela kulendawo?

11. English: Are individuals allowed to sell the land?

Isizulu: Kuvumelekile ukuthi umhlaba udayiswe?

13. Question in English: How does the traditional council interact with the municipality pertaining to developmental issues?

Isizulu: Mayelana nentuthuko, nibambisana kanjani nomaspala mhlampe?

Annexure C

REQUEST FOR PERMISSION TO UNDERTAKE RESEARCH.

I am currently registered for the degree of Master of Public Policy at the University of Kwazulu-Natal Howard Campus. My studies include a treatise with the following research topic: An exploratory study into the challenges of the Tenure Reform in Sweet Water (Pietermaritzburg): Implications for Policy and Practice.

I hereby request permission to undertake research in your project. Participation of the respondents will be voluntary with the option of withdrawing at any stage of the process and there will be no negative consequences linked to nonparticipation. An informed consent will be requested before the respondents' participation in the research process. Confidentiality will be ensured. Information obtained will be used for the purpose of the study only and I undertake to ensure that the information will be used in such a way that the respondents cannot be identified. Therefore, the final report will not include identifying information.

Questionnaires will be used to collect data from the targeted research group. Respondents will be advised that if they feel uncomfortable to answer certain questions they may not answer them. By participating in the study, respondents could contribute towards the identification and elimination of factors which may negatively affect the implementation of the land reform program. The research findings will be made available to your project.

Your assistance in this regard will be highly appreciated.

Yours sincerely

Miss Mbalenhle Dlamini.

Annexure D

INFORMED CONSENT DOCUMENT

I am currently registered for the degree of Master of Public Policy at the University of Kwazulu-Natal Howard Campus. My studies include a treatise with the following research topic; The Challenge for Real Transformation. An exploratory study into the challenges of the Tenure Reform in the area of Sweetwater (Pietermaritzburg): Implications for Policy and Practice

The aim of this study is to explore challenges experienced by the community of Sweetwater with regards to land tenure security. This study will draw focus on objectives pursued by the South African National Land Reform program with specific reference to tenure reform. This shall be done by assessing and identifying different factors or problems currently affecting the community of Sweet waters with specific regards to the implementation of the tenure reform program within the area itself.

The findings of this study would be used for academic purposes only. Anonymity is guaranteed for all the information you will provide me with, most importantly your identity will not be revealed

Participation in this project is completely voluntary. You can withdraw from this study at any time if you wish to do so. There will be no adverse consequences on you if you decide to withdraw from the study. You will not be paid or given any benefits for your participation in this study.

Institution: UKZN Howard College

DECLARATION

I..... (Full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in this research.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

.....

SIGNATURE OF PARTICIPANT

DATE